

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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5 In the Matter of:

6 LEHMAN BROTHERS HOLDINGS INC., Case No. 08-13555-scc

7 Debtor.

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10 United States Bankruptcy Court

11 One Bowling Green

12 New York, New York 10004-1408

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14 December 18, 2017

15 10:20 AM

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23 B E F O R E:

24 HON. SHELLEY C. CHAPMAN

25 U.S. BANKRUPTCY JUDGE

1 IN RE: RMBS Claims Estimation Trial

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25 Transcribed by: Dawn South and Sherri L. Breach

1 A P P E A R A N C E S :

2 WILKIE FARR & GALLAGHER LLP

3 Attorneys for the Plan Administrator

4 787 Seventh Avenue

5 New York, NY 10019-6099

6

7 BY: TODD G. COSENZA, ESQ.

8 BENJAMIN P. MCCALLEN, ESQ.

9 JOSEPH G. DAVIS, ESQ.

10

11 HOLWELL SHUSTER & GOLDBERG LLP

12 Attorneys for the Trustees

13 750 Seventh Avenue, 26th Floor

14 New York, NY 10019

15

16 BY: MICHAEL S. SHUSTER, ESQ.

17 DWIGHT A. HEALY, ESQ.

18 NEIL R. LIEBERMAN, ESQ.

19 DANIEL P. GOLDBERG, ESQ.

20 BENJAMIN F. HEIDLAGE, ESQ.

21

22

23

24

25

1 ROLLIN BRASWELL FISHER LLC/PARTNER

2 8350 E. Crescent Parkway

3 Suite 100

4 Greenwood Village, CO 80111

5

6 BY: MICHAEL ROLLIN, ESQ.

7 MARTIZA DOMINGUEZ BRASWELL, ESQ.

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P R O C E E D I N G S

THE COURT: Lehman folks, you can get in place,
I'll come back in five minutes and we'll get started.

(Recessed at 10:20 a.m.; reconvened at 10:26 a.m.)

THE COURT: How's everyone?

(A chorus of good)

THE COURT: Where is Mr. Aronoff?

MR. DAVIS: Mr. Aronoff is coming up, we have a
few extra tabs to pass out --

THE COURT: Okay. Please, Mr. Aronoff, come on
up.

MR. DAVIS: These are tabs for the large binder.

THE COURT: Thank you.

MR. DAVIS: Of the four.

JAMES H. ARONOFF, WITNESS, PREVIOUSLY SWORN

THE COURT: Okay. Mr. Aronoff, today is the day.
We're going to -- you're going to be released. I hope you
had a good weekend.

THE WITNESS: Thank you. Before we start could I
just get a water? Is there any water? Thank you very much.
Thanks.

THE COURT: Are you situated with your binders?

THE WITNESS: I believe everything is where I left
it.

THE COURT: Okay.

1 THE WITNESS: Except for this new stuff.

2 THE COURT: Okay. All right. Everyone set?

3 Okay, Mr. Davis, go ahead.

4 MR. DAVIS: All right.

5 CROSS-EXAMINATION

6 BY MR. DAVIS:

7 Q Good morning, Mr. Aronoff.

8 A Good morning.

9 Q I want to start with an exhibit that you were shown by
10 Mr. Shuster last week. This is TRDX-213, which is up on the
11 screen. It's also in your binder if you need to see it in
12 paper. But, Mr. Aronoff, who created this demonstrative?

13 A I don't know.

14 Q Okay. And this demonstrative has kind of two halves,
15 right, the top and the bottom. Would you remind us since
16 it's been a few days, what is Aronoff Exhibit 4?

17 A It's an exhibit to my affirmative report in which all
18 the misrepresentation of income breach findings are
19 summarized and certain additional information regarding
20 those breach findings is also included in that exhibit.

21 Q Okay. And what is the claim tracking spreadsheet?

22 A My understanding is the claim tracking spreadsheet is a
23 document that was required to be submitted -- required under
24 the protocol to be submitted with each of the claims that
25 were submitted thereunder.

1 Q Okay. So it was a document by which the parties
2 exchanged information during the protocol; is that fair?

3 A Yes.

4 Q Now, last week Mr. Shuster asked you with reference to
5 this exhibit, he said, so the information that's in Column
6 C, D, and G in Exhibit 4 are taken from the claims tracking
7 spreadsheet. And I think you responded, yes, I see that.
8 Do you recall that exchange?

9 A Not specifically.

10 Q Okay. Do you have any understanding of the purpose of
11 putting an excerpt from the claim tracking spreadsheet
12 underneath an excerpt of your Exhibit 4?

13 A I think the purpose was to provide guidance and an
14 understanding of where certain data points that were
15 included in the exhibit were initially provided to the plan
16 administrator.

17 Q Okay. But Exhibit 4 was not created by extracting data
18 from the claims tracking spreadsheet, right?

19 A I don't know that to be the case.

20 Q Exhibit 4 is your exhibit, correct?

21 A Exhibit 4 is my exhibit, that's correct.

22 Q Do you know how data was extracted to create your
23 Exhibit 4?

24 A My understanding is that Duff & Phelps extracted the
25 relevant data from, for lack of the better term, the

1 database in which this data resided.

2 Q Right. And that database that you're referring to is
3 not the claims tracking spreadsheet is it?

4 A It's the same database in which the information was in
5 the claims tracking data sheet was -- resides as well.

6 Q I'm sorry, but that's not the question I asked.

7 Exhibit 4 was not extracted -- the data for Exhibit 4 was
8 not extracted from the claims tracking spreadsheet, correct?

9 A As I said, I don't know that to be the case or not.

10 Q You just told me that the data for Exhibit 4 was
11 extracted from a different database. Isn't that what you
12 just said?

13 A No, I don't think I did.

14 Q Was the data for Exhibit 4 extracted from a different
15 database not from the claims tracking spreadsheet?

16 A I asked for data to populate the fields in Exhibit 4.
17 That was the same data that was provided pursuant to the
18 protocol. Where exactly that data was extracted from by
19 Duff & Phelps to prepare the exhibit I'm not entirely sure.

20 Q Mr. Aronoff, in your deposition didn't you tell me that
21 the data for Exhibit 4 was extracted from a different
22 database?

23 A My understanding is that the data that was -- the
24 source of data for the claim tracking spreadsheet was the
25 same database that was used to prepare the data points in

1 the exhibit. But since I didn't physically create Exhibit 4
2 I'm somewhat uncertain as to what the priority of creation
3 of Exhibit 4 was.

4 I understand and I have for reason not to believe that
5 all of the same data was used in the claim tracking
6 spreadsheet, Exhibit 4, and resides in the database, but I
7 didn't create the exhibit.

8 Q Okay. So if there were differences between the claim
9 tracking -- the data in the claim tracking spreadsheet and
10 your Exhibit 4 that would be a problem for you wouldn't it?

11 A It wouldn't be a problem for me, no.

12 Q So you don't care with the data in the claims tracking
13 spreadsheet is the same as the data in Exhibit 4?

14 A I'm not so long as it's the same -- they're all from
15 the same database and the data was extracted and it's the
16 same data, no. I don't necessarily care whether the
17 sequence of events to prepare Exhibit 4 meant someone looked
18 at the claim tracking spreadsheet and extracted it from
19 there or they chose to extract the very same data from the
20 database that was used to create the claim tracking
21 spreadsheet. No, I don't care.

22 Q So if the data in the database from which your Exhibit
23 4 was extracted differs from the data that's in the claims
24 tracking spreadsheet that's of no moment to you?

25 A Only to the extent that I wanted to make sure that the

1 information in Exhibit 4 was information that had been
2 previously provided to the PA. And to the extent there was
3 a difference that might not be the case.

4 Q So the data in Exhibit 4 was extracted from a database
5 called Team Connect; is that right?

6 A Some of it was.

7 Q Okay. And you didn't recheck the data from that
8 database, that Team Connect database when you imported it
9 into Exhibit 4 or any other of your exhibits, right?

10 A No, that's not correct.

11 Q Okay.

12 MR. DAVIS: Your Honor, I'd like to read pages 405
13 beginning at line 15, to 406 ending at line 9.

14 THE COURT: Okay.

15 MR. DAVIS: Of his deposition.

16 BY MR. DAVIS:

17 Q Okay. Question, "I'm not talking about the QC process,
18 I'm talking about for purpose of constructing this chart.
19 What did you do to verify that the information was
20 accurately captured in this chart that is Exhibit 4?"

21 Answer, "To the extent the data was accurate in the
22 database it was the same data, it was all extracted and
23 stored in the same -- in the same database provided by the
24 QC firm that was checked before it was entered into Team
25 Connect into whatever form that was done. It was further

1 QC'd by the QC process that was included in the claims
2 package as the same information that was extracted from the
3 database to prepare this summary report."

4 Is that a question I asked and an answer you gave?

5 MR. SHUSTER: Excuse me, objection. The question
6 and answer Mr. Davis is reading is not inconsistent with the
7 answer that the witness just gave in his trial testimony.
8 So it's not clear if he's trying to impeach the witness, but
9 it's -- they're not inconsistent.

10 THE COURT: Could you put that back up again?
11 Someone took the -- I think it is inconsistent actually. If
12 you'd like me to explain how I'd be happy to do that.

13 MR. SHUSTER: No, I'm happy to just be overruled
14 and leave it at that.

15 THE COURT: Overruled.

16 MR. SHUSTER: Thank you, Your Honor.

17 BY MR. DAVIS:

18 Q Now, Mr. Aronoff, you did not provide that underlying
19 database to us when you issued your reports did you?

20 A No.

21 Q And as far as you know the database from which the data
22 were extracted for your exhibits was never produced to the
23 plan administrator, right?

24 A I know significant portions of that data were in fact
25 provided to the plan administrator.

1 Q But don't know that the database was provided do you?

2 A I just -- no, I don't.

3 Q Mr. Aronoff, you're not offering any opinions on loss
4 calculations, correct?

5 A I'm sorry, on what?

6 Q Loss calculations.

7 A No, I'm not.

8 Q And you're not offering any opinion on statistical
9 sampling methodologies are you?

10 A That's correct, I'm not.

11 Q And you haven't amended your expert report since the
12 summer; is that right?

13 A That's correct.

14 Q Okay. All right. Now, I'd like to take a look at
15 Exhibit 4 in a little more detail, and you'll find an
16 excerpt of it in your binder, your large binder at tab 4.
17 And we'll put it on the screen too, so it's kind of easy to
18 see.

19 THE COURT: Mr. Davis, I'm not following your --

20 MR. DAVIS: Okay.

21 THE COURT: -- binder terminology. I'm there now.

22 MR. DAVIS: The big binder is not very precise, I
23 realize that.

24 THE COURT: I just hadn't noticed that the tabs
25 both had numbers and exhibit number.

1 MR. DAVIS: Yes.

2 THE COURT: So I'm unconfused now. Okay.

3 BY MR. DAVIS:

4 Q Okay. So this Exhibit 4 was created to convey certain
5 data points regarding the misrepresentation of the income
6 claims that are the subject of your report; is that right?

7 A I'm just trying to match this page with my binder. I
8 can't seem to locate it. 656 of 984?

9 Q If you go to the first page of Exhibit 4. We'll take
10 it down. How about the first page.

11 A Yeah, I have this. I couldn't --

12 Q Okay.

13 A -- find that page, 656.

14 Q All right. Or we can just -- for now we can just look
15 at the first page, we don't need it on the screen if we
16 don't have it on the screen. So just page 1. I'm just
17 looking at the columns at this point, okay? And the format
18 of the document. So the bottom of the exhibit says it was
19 prepared by Duff & Phelps, right?

20 A Yes.

21 Q And Duff & Phelps prepared this exhibit for purposes of
22 the litigation, right?

23 A They prepared it for inclusion in my report.

24 Q Okay. So this wasn't prepared while you were at Duff &
25 Phelps, right?

1 A This exhibit, no.

2 Q Okay. And focusing on the represented monthly income
3 column in Exhibit 4, that is supposed to reflect what the
4 loan review firms determined was the represented monthly
5 income based on their review of the loan files, right?

6 A The stated income by the borrower, correct.

7 Q Okay. And you don't know what instructions were given
8 to the loan review firms in terms of how they would collect
9 this represented monthly income data, right?

10 A They were to conduct the review and confirming with
11 industry custom and practice, so I think they had a fairly
12 clear understanding of what the monthly income was.

13 MR. DAVIS: Your Honor, I'd like to read page 405
14 -- 406 -- I'm sorry -- of his deposition, lines 14 to 18.

15 THE COURT: Okay. If you'll put it up on the
16 screen.

17 BY MR. DAVIS:

18 Q Question, "What instructions were given to the loan
19 review firms with respect to determining what the
20 represented monthly income was?"

21 Answer, "I don't know."

22 Did I ask that question and you gave that answer,
23 Mr. Aronoff?

24 A Apparently, yes.

25 Q Okay. And you don't know who inputted data into that

1 database we were discussing before from which your Exhibit 4
2 was created, correct?

3 A I don't. I think it was electronically transferred. I
4 don't know if anyone specifically input it.

5 Q Now, in Exhibit 4 there's a column called evidence
6 types, right?

7 A Yes.

8 Q And this contains a description of what you said I
9 think was the primary evidence cited by the trustees for
10 each of the breach findings in this chart; is that right?

11 A That's what it was intended to contain, yes.

12 Q Okay. And it doesn't identify any information that
13 would be contradictory or inconsistent with the breach
14 claim, right? That column.

15 A It was the primary supporting evidence, so that's
16 correct.

17 Q And it doesn't identify any of the corroborating
18 information that might be in the loan file, right?

19 A That's correct.

20 Q Okay. I'm going to take you now to another tab in that
21 binder, tab 15. And this is an excerpt of Exhibit 15 to
22 your opening report, which I believe you also testified last
23 week about. Can you remind us what Exhibit 15 of your
24 opening report is?

25 A It was the comprehensive schedule of each individual

1 breach finding and each individual loan with some summary
2 information about each individual breach finding as well.

3 Q Okay. And Duff & Phelps also created Exhibit 15 for
4 purposes of supporting your report; is that right?

5 A That's correct.

6 Q Okay.

7 MR. DAVIS: And I'll have to ask you to pull that
8 up for a minute and we'll come back to it.

9 BY MR. DAVIS:

10 Q Now, I'm going to take you now to tab 29 in that big
11 binder, which is an exhibit of the claims tracking
12 spreadsheet. And there should be three rows on the binder.
13 I'm going to ask you to -- I'm sorry -- on this excerpt, and
14 I'm going to ask you to look at the last of the three rows
15 first, which is a row for the loan ending in 9006. You see
16 that? And Jason will help you on the screen.

17 (Pause)

18 Q Do you see that?

19 A I do.

20 Q Okay. I want to take you to the alleged defect for
21 this loan which is in column A-C. Do you see that it says
22 misrepresentation of income?

23 A Yes.

24 Q And you see the column that is A-E, and that's headed
25 contractual provisions breached?

1 A Yes.

2 Q What information is in that column? Just generically
3 first.

4 A That column was supposed to contain the applicable rep
5 and warranty.

6 Q Okay. And in this case for this loan ending in 9006 it
7 says the applicable rep and warranty was the underwriting
8 methodology representation, right?

9 A Yes.

10 Q So on this loan ending in 9006, according to the claims
11 tracking spreadsheet, the trustees asserted the claim for
12 misrepresentation of income and cited the underwriting
13 methodology representation for this trust, which is LXS 2007
14 and trust, right?

15 A That's what it looks like, yes.

16 Q Now I want to take you back to tab 15. And there are a
17 number of pages here. About two-thirds of the way through
18 I'm going to ask you to look for row 59333.

19 (Pause)

20 A I'm sorry, where?

21 Q 59333.

22 A That's the loan number?

23 Q That is the row number. The loan number is 9006, the
24 same one we were just looking at.

25 (Pause)

1 A Okay. I think I'm in that spot.

2 Q You think you've got it. Okay. And do you see in the
3 lower number column, which is column B, it's the loan ending
4 in 9006, which is the loan we were still -- we were just
5 looking at?

6 A I see that, 9006, yes.

7 Q Okay. And if you look at column D it says the breach
8 is misrepresentation of income, right?

9 A I see that.

10 Q Okay. Now, if you look at column E under contractual
11 provisions breached it references the no event of default
12 representation. Do you see that?

13 A I do.

14 Q So the underwriting methodology representation is not
15 listed there in column E, right?

16 A It may not have been a breach finding that was the
17 subject of my report.

18 Q This is the only breach finding of this loan, sir.

19 A How do I know that?

20 Q If you go back to the claims tracking spreadsheet
21 you'll see that there's only one breach on the loan.

22 A That's the -- I didn't know if that was the entire
23 claim tracking spreadsheet or an excerpt from it.

24 Q It's the whole tracking spreadsheet for that loan.

25 So the data in your Exhibit 15 for this loan doesn't

1 match the loan level data in the claims tracking spreadsheet
2 that was exchanged during the protocol; is that right?

3 A Again, I don't know, I don't know if that claim
4 tracking spreadsheet only contained one breach or not.

5 Q Okay. Well let's go back to the claims tracking
6 spreadsheet then. If you look this is tab 29. You can
7 follow the row across and you can see the actual basis for
8 defect number 1, the actual provisions breached in number 1.
9 And if you turn the page in that third row there's no number
10 2, there's no number 3. You see that?

11 (Pause)

12 A No, I see what's on the page here, I just don't know if
13 this excerpted row represents the entirety of the claim
14 submission with respect to this loan or not.

15 THE COURT: Well let me -- well, Mr. Aronoff,
16 where else would it be? I mean is the claims tracking
17 spreadsheet composed in a random manner? I mean what --

18 THE WITNESS: No. This would have been an Excel
19 spreadsheet that contained all of the lines for a loan that
20 were submitted, and I don't know if this excerpt is the
21 entirety of the data with respect to that loan that was
22 submitted in that spreadsheet or not.

23 I understand this describes this particular defect
24 and this particular rep, but I don't know if there were
25 additional ones. Loans often had a number of defects.

1 BY MR. DAVIS:

2 Q If you turn the page of exhibit -- tab 29 do you see
3 the rest of the row continues? And do you see the columns
4 for the additional defects are blank? Does that help you?

5 A So the thing that ties them together is --

6 Q The row number.

7 A -- 2106?

8 Q No, 2246.

9 A I don't see a row number on the other side.

10 Q Bottom left-hand corner of each page, sir.

11 A Okay. I see those columns are blank.

12 Q Okay. So the data in your Exhibit 15 for this loan
13 doesn't match the data in the claims tracking spreadsheet,
14 correct?

15 A If this is a representation of the claims tracking
16 spreadsheet yes, that's correct.

17 Q Do you have any idea how many differences like this
18 there are between your Exhibit 15 and your claims tracking
19 spreadsheet?

20 A I don't.

21 Q Okay. We're still on I think tab 29 is what you still
22 have open. And now let's look at row 2160, which is the
23 first of these three rows. Okay. And this is for the loan
24 ending in 0190. Do you see that?

25 A Yes.

1 Q Okay. And if you look at column A-C you'll see an
2 alleged defect number 1 for misrepresentation of occupancy.
3 Do you see that?

4 A Yes.

5 Q Okay. And just before -- just to do this if you'd turn
6 the page you'll see the row continues, and for this loan
7 there is no other breach loan. Do you see that?

8 A I do.

9 Q Okay. Now, for the misrepresentation of the occupancy
10 claim what are the contractual provisions breached according
11 to the claims tracking spreadsheet?

12 A The no event of default rep and the no entry statement
13 rep.

14 Q Okay. It doesn't say no entry statement though did it,
15 sir?

16 A No, but I know that's the same rep.

17 Q It says no fraud, correct?

18 A That's how it's titled here, that's correct.

19 Q Okay. So the denomination of that representation
20 changed between the claims tracking spreadsheet and your
21 reports, right?

22 A I don't know, I didn't prepare the claim tracking
23 spreadsheet.

24 Q Well you prepared your reports, correct?

25 A I did.

1 Q And your reports refer to this as the no untrue
2 statement representation, right?

3 A They do, and for this loan that would be in the
4 applicable trust Rec. 1.04 CV LXS 2006-10N.

5 Q Sure. Expect here it's called the no fraud
6 representation, right?

7 A It appears so, yes.

8 Q Okay. So how many times did the name change from no
9 fraud in the claims tracking spreadsheet to no untrue
10 statement in your exhibits, do you have any idea?

11 A None.

12 Q Okay. So to take us back there are two bases -- two
13 representations listed, right? The no event of default and
14 no fraud or no untrue statement rep, right?

15 When you said none in response to my question about
16 knowing how many times this changed you meant you didn't
17 know how many times this changed between the two? Let me
18 back up and ask the question again.

19 Do you know how many times the name no fraud changed
20 between the claims tracking spreadsheet and your exhibits to
21 no untrue statement?

22 A I don't.

23 Q Okay. Thank you.

24 So we've got two representations listed, no event of
25 default and no fraud and no untrue statement.

1 Now let's go to tab 15 of your report. Tab 15, which
2 is Exhibit 15 of your report, and now I'm going have to ask
3 you to hunt again for the row at 58226, which is about
4 halfway through. And it's the top row of the page.

5 (Pause)

6 Q Are you with me?

7 A Yes.

8 Q Okay. And you see this is the excerpt from your
9 Exhibit 15 for that same loan ending in 0190?

10 A I do.

11 Q And column D confirms this is a misrepresentation of
12 occupancy claim, right?

13 A Yes.

14 Q Now, column E, which is entitled contractual provisions
15 breached lists three contractual provisions, right? No
16 event of default, no untrue statement, and mortgage loan
17 schedule. Do you see that?

18 A Yes.

19 Q So the mortgage loan schedule representation was not
20 cited as a basis for this claim in the claim tracking
21 spreadsheet but it is in your Exhibit 15, right?

22 A To the extent the exhibit I looked at is a
23 representation of the claim tracking spreadsheet, yes,
24 that's correct.

25 Q Okay. And do you have any idea how many times your

1 Exhibit 15 differs from the claim tracking spreadsheet in
2 this respect that a contractual provision breached was
3 added?

4 A I don't know how many times it differed in this
5 respect, if at all, other than this one.

6 MR. DAVIS: Your Honor, we have a supplement slide
7 which we'd like to pass out.

8 THE COURT: Okay. Sure.

9 BY MR. DAVIS:

10 Q Mr. Aronoff, while that's coming I'm going to ask you
11 to -- and I hope it's here -- to --

12 A Thank you. Thanks.

13 Q -- turn to tab 4 in the big binder and in that excerpt
14 of Exhibit 4 towards the back you'll see page 842 of 982.
15 Do you see that?

16 THE COURT: I'm sorry --

17 THE WITNESS: Sorry, what was the page?

18 THE COURT: -- Mr. Davis, where are we?

19 MR. DAVIS: We're in tab 4 of the large binder.

20 THE COURT: Oh, we're in tab 4 of the large
21 binder.

22 MR. DAVIS: Yeah.

23 THE COURT: Okay.

24 THE WITNESS: What page, please.

25 BY MR. DAVIS:

1 Q 842.

2 (Pause)

3 Q Are you with me, sir?

4 A I am.

5 Q Okay. And do you see count 29773? It's towards the
6 top, and it's the loan ending 2262.

7 A Yes.

8 Q Thank you. And your Exhibit 4 says that for this loan
9 the represented monthly income was \$5,653, right?

10 A Yes.

11 Q And it says that the actual monthly income for the loan
12 was \$340; is that right?

13 A Yes.

14 Q Now, let's go back to tab 29, which is the claims
15 tracking spreadsheet, and we're going to look at the middle
16 row on the page, which is for the loan ending 2262. Now for
17 this loan there are three alleged defects. Do you see that?

18 A Yes.

19 Q Okay. So we were in your Exhibit 4, which is
20 misrepresentation of income, right?

21 A Yes.

22 Q So we're going to look at the misrepresentation of
23 income allegation in the claims tracking spreadsheet, which
24 is I think defect number 3. And I'll ask you to read
25 through that and then I'd like to have slide 4 put up,

1 please, Jason.

2 (Pause)

3 Q So, Mr. Aronoff, the factual basis alleged for this
4 loan --

5 MR. DAVIS: Your Honor, are you with me?

6 THE COURT: I am not.

7 MR. DAVIS: Okay. Let me help then.

8 THE COURT: I am -- I'm trying to keep --

9 MR. DAVIS: It is hard.

10 THE COURT: Okay. This segment began with Aronoff
11 Exhibit 4, right?

12 MR. DAVIS: Correct.

13 THE COURT: And it began with count 29773, which
14 is loan 2262.

15 MR. DAVIS: Correct.

16 THE COURT: And it was -- this is -- it's a breach
17 finding.

18 MR. DAVIS: Correct.

19 THE COURT: It's an income breach finding, right?

20 MR. DAVIS: Correct.

21 THE COURT: Fifty-six fifty-three versus 340.

22 MR. DAVIS: Correct.

23 THE COURT: Okay. Then the next stop was the
24 claims tracking spreadsheet.

25 MR. DAVIS: Correct.

1 THE COURT: Right? So now we're on the claims
2 tracking spreadsheet and you showed something, and now I'm
3 now looking at Aronoff Exhibit 4.

4 MR. DAVIS: Right. If you look on the slide
5 you'll see it on the top.

6 THE COURT: And who -- this is the slides that
7 Mr. Shuster put in?

8 MR. DAVIS: No, no. This is our supplemental --

9 THE COURT: This is yours.

10 MR. DAVIS: -- slide deck from today. Yeah.

11 THE COURT: Okay.

12 MR. DAVIS: So --

13 THE COURT: So now I'm looking at all three
14 things.

15 MR. DAVIS: Right. So if you look at the slide on
16 the top you'll see there was the allegation that you just
17 repeated from Exhibit 4 for the loan ending 2262.

18 THE COURT: Okay. Hold on, because I'm still not
19 there.

20 MR. DAVIS: Uh-huh.

21 (Pause)

22 THE COURT: I apologize.

23 MR. DAVIS: That's okay.

24 THE COURT: Kind of a lot of paper up here. All
25 right.

1 MR. DAVIS: I should be the one apologizing.

2 THE COURT: So now I am where you are. Okay. Go
3 ahead.

4 MR. DAVIS: Okay.

5 BY MR. DAVIS:

6 Q So, Mr. Aronoff, the question is that the information
7 that's provided in the factual basis for this loan ending in
8 2262 does not match the alleged actual monthly income on
9 your Exhibit 4; is that right?

10 A It appears not to, and I need to see the other
11 correspondence back and forth related to this loan to see if
12 I could discern why they're different.

13 Q Okay. So you would need to look at the file to figure
14 out why this difference exists, right?

15 A No, not necessarily.

16 Q What correspondence were you referring to, sir?

17 A To the extent the plan administrator's rebuttal pointed
18 out that there was a misstatement in terms of the income
19 that was contained in the claim package or the file, and we
20 had an opportunity to look at that in step 2, made the
21 appropriate correction, the final corrected number would be
22 what's reflected in the database and what'd be reflected in
23 the exhibits to the report.

24 We had -- suffice to say, and I don't know if that's
25 the case with this loan, but suffice to say that to the

1 extent information that was provided in the claim tracking
2 spreadsheet with the initial submission of a claim was later
3 updated either through the PAs pointing out on error or in
4 terms of reviewing the file in connection with the PA's
5 response, and that error was identified the database would
6 have been updated and that revised figure would have been
7 included in the exhibit.

8 I'm not saying that I know that that happened in this
9 case, I'm just explaining why there may be other than
10 mistake a potential difference in those -- in what appeared
11 in the claim tracking spreadsheet for any given breach
12 finding and what appeared in the exhibit with respect to
13 that breach finding.

14 Q Okay. But at least with respect to what we have in
15 front of us now, which is the excerpt from your Exhibit 4
16 and the excerpt from the claim tracking spreadsheet, they
17 don't match do they?

18 A No.

19 Q Okay. Now, I don't know if you remember that bar chart
20 that Mr. Shuster put up showing misrepresentation of income
21 variances five percentage. Do you remember that? It's
22 TRBX-193.

23 MR. DAVIS: Maybe we could put that up, Jason
24 would having people shuffle paper.

25 BY MR. DAVIS:

1 Q Okay. So based on your Exhibit 4 and the differential
2 that was referenced in your Exhibit 4 this loan would have
3 fallen all the way over in that right-hand column, right?

4 A Yeah, I think it was like 1500 percent, yes.

5 Q Okay. But that's an error, correct?

6 A Again, I don't know without looking at the other
7 correspondence related to this loan.

8 Q Well in terms of what you have in front of you, sir,
9 it's an error, correct?

10 A It may not be an error.

11 THE COURT: I'm sorry, what was that last answer?

12 THE WITNESS: It may not be an error.

13 THE COURT: What may not be an error?

14 THE WITNESS: The error may be in the description
15 in the claim tracking spreadsheet, and that may have been
16 corrected. And so the data point in the exhibit and the
17 resulting calculation may not be an error.

18 THE COURT: Don't you think the error is probably
19 that somebody just dropped a zero?

20 THE WITNESS: I don't know.

21 THE COURT: If you add the two numbers on the
22 demonstrative you get 3400. It's just an observation.

23 THE WITNESS: Possibly. I just don't know.

24 THE COURT: Thank you.

25 BY MR. DAVIS:

1 Q Okay. Well that sort of foreshadows the next one.

2 Let's take a look at again tab 4, and this time we're

3 looking for page 846 at tab 4. So it's basically on the

4 backside of the page you were looking at before. And about

5 two-thirds of the way down you will see count 29929 for the

6 loan ending in 3557. You see that?

7 A Yes.

8 Q Okay. And your Exhibit 4 says that the represented

9 monthly income for this loan is \$21,500, right?

10 A Yes.

11 Q And it says that the actual monthly income for the loan

12 is \$1,169, right?

13 A Yes.

14 Q And that the monthly percentage difference is 1738.79

15 percent, right?

16 A That's correct.

17 Q That will take it again all the way over to the far

18 right-hand column or block in that chart, correct?

19 A Yes.

20 Q Okay. Now, if you'd turn to tab 30. This is the claim

21 tracking spreadsheet excerpt for the loan ending in 3557.

22 See that?

23 A Yes.

24 Q And if you go -- it's a misrepresentation of income

25 claim, right, which you can see from column A-D? You see

1 that?

2 A Yes.

3 Q And if you look at column A-E it says that the
4 trustees' calculation of the actual or true income was based
5 on a 2007 income of 11,169.25. Do you see that?

6 A Yes.

7 Q So again here there's a difference between the claims
8 tracking spreadsheet and your Exhibit 2, right?

9 A Yes.

10 Q Okay. Now, I want to take you to tab 37, and we have
11 another excerpt of the claims tracking spreadsheet for the
12 loan ending in 7468.

13 A Okay. Where's tab 37?

14 Q Thirty-seven, yes?

15 A No, where is tab 37? It's not in this binder.

16 Q Oh, in the big binder. I'm sorry. Should be. Should
17 be what we added to it today.

18 A Oh, okay.

19 (Pause)

20 A I'm there.

21 Q Okay. So just to orient you a bit there are three
22 breach claims on this loan. You see that, the first alleged
23 defect number 1 in column A-D is failure to obtain first or
24 second lien. See that?

25 A Yes.

1 Q Okay. And I believe that claim was withdrawn so we're
2 not going to be talking about that.

3 Then the second and the third defects are both
4 misrepresentation of income defects. See that?

5 A Yes.

6 Q One is for the person who was denominated the co-
7 borrower and one is for the person who was denominated the
8 borrower. You see that?

9 A I do see that.

10 Q Okay. So for the co-borrower -- we'll start with the
11 co-borrower -- the stated monthly income, according to this
12 description, was \$19,000. See that?

13 A Yes.

14 Q And according to the trustees a post origination tax
15 return showed that the co-borrower was actually making only
16 \$2,069 a month. You see that?

17 A Yes.

18 Q And it's based on a tax return that they said showed
19 her with the same employer, right?

20 A Yes.

21 Q And the trustees also relied on an origination credit
22 report making an observation about the co-borrower's credit
23 utilization. Do you see that?

24 A I do.

25 Q Okay. Now, as for borrower, hopefully still in here,

1 the trustees alleged his stated income was 9,897 per month,
2 right?

3 A Yes.

4 Q And that the actual income was 7,573 per month, right?

5 A Yes.

6 Q And they said that was based on a same year audit
7 verification through a work number, right?

8 A Yes.

9 Q And they -- the trustees also cite an origination
10 credit report as support for this claim, correct?

11 A Yes.

12 Q Okay.

13 MR. DAVIS: All right. Now, let's have slide 8,
14 please.

15 BY MR. DAVIS:

16 Q So on the slide in front of you, and I can take you to
17 the documents if you want to, but the information is on the
18 slide, you will see in an excerpt from your Exhibit 4 for
19 this loan on the top and that claims tracking spreadsheet
20 excerpt that we saw on the bottom. You see that?

21 A Well what about it again?

22 Q I'm just asking whether you can see that at the top is
23 an excerpt from your Exhibit 4 for the co-borrower, okay,
24 whose represented monthly income was 19,000, and the alleged
25 actual monthly income was 2,069.

1 A I see that.

2 Q Okay. And you see that the evidence type listed in
3 support of that claim is a tax return, correct?

4 A Yes.

5 Q Okay. And the origination credit report, which is in
6 the claim tracking spreadsheet, is not listed as an evidence
7 type, right?

8 A That's correct.

9 Q So someone made a determination that in this case the
10 tax return was primary and the origination credit report
11 wasn't worthy of being put as an evidence type on this
12 document, right?

13 A No, I don't think that's right.

14 Q Okay.

15 A I think if you read it in context the only place -- and
16 you understand how these reviews are done -- the only place
17 the number, the \$2,069 per month number appears is in the
18 tax return.

19 The observation that's being made is one I made in my
20 testimony last week where in addition to seeing whether the
21 stated income is reasonable or not it's very common for an
22 underwriter to look at the borrower's credit and assets to
23 see what the rest of the story is. And here I think that's
24 what was being done.

25 The origination credit report would only talk to you

1 about the credit situation of a borrower and comment whether
2 or not that credit utilization was consistent with someone
3 making the borrower's stated income. But the source of
4 information regarding the difference in income, the 19,000 a
5 month versus 2,000 a month, the only document in the file
6 apparently that was cited in the factual basis -- and I
7 don't have the claim package in front of me so I don't know
8 if there were other documents -- is the tack return. That
9 would be consistent with how I would expect the factual
10 basis for the claim in terms of the supporting -- the
11 evidence type would be cited.

12 Q Okay. So the origination credit report is just part of
13 the rest of the story?

14 A It's -- I think it's telling in this case, but yes,
15 that's correct.

16 Q Okay. And the kinds of things you mentioned credit
17 reports and assets. Are there other things that you would
18 be looking for for the rest of the story for a loan like
19 this?

20 A I don't have the specific file in front of me, but
21 yeah, in terms of determining whether income is reasonable
22 or not you look at the entirety of the file, you look at the
23 borrower's age, you look at therapy education, you look at
24 their time on the job, you look at a whole range of factual
25 circumstances that again may or may not be dispositive, but

1 to an experienced underwriter may have some impact as to how
2 they start to formulate what may be going on in the file.

3 Q Job title or profession might be another thing you
4 would look at?

5 A Maybe.

6 Q Okay. If we go to the next slide, hope we with do this
7 very quickly. This slide just makes the same point with
8 respect to the comparison of Exhibit 4 for the borrower and
9 the claims tracking spreadsheet that once again the
10 origination credit report is not mentioned as an evidence
11 type, as you just explained. Okay? You see that?

12 A Yes, I do, and that makes sense, because the work
13 number would be the document where the actual income number
14 that was being used as his actual income would be stated.
15 So it could be verified by the plan administrator to see if
16 in fact that document exists and if the number was
17 accurately reflected in the factual basis for the defect.

18 Q Okay. And if we can see the next slide all we're doing
19 here is putting together the two, the borrower and the co-
20 borrower allegations to show that the purported combined
21 actual income of this couple is just over \$93,000. Do you
22 see that?

23 (Pause)

24 A Yeah, I see it.

25 Q Okay. So we're now going to look at --

1 THE COURT: Mr. Davis --

2 MR. DAVIS: Yes.

3 THE COURT: -- could you come up for a second?

4 MR. DAVIS: Sure.

5 THE COURT: Mr. Shuster?

6 (At sidebar off the record)

7 BY MR. DAVIS:

8 Q So, Mr. Aronoff, the Court has just pointed out that my
9 math as usual is bad.

10 A Yeah, it can't be right.

11 Q Yeah. It's -- I think --

12 A Ninety five hundred times 10 would be 95,000 and this
13 is --

14 Q Right. I think the correct when you add the two is
15 115,704 total combined income.

16 A Okay.

17 Q So my mistake.

18 All right. I'm going to just ask you to turn now to
19 tab 34 of your binder, and we're still with this loan but
20 we're going to talk about a different exhibit that at least
21 we haven't talked about yet today, and that's Exhibit 17 to
22 your report. Would you remind us what Exhibit 17 is?

23 A It was a listing of all of the misrepresentation of
24 income breach findings that were the subject of the report
25 identifying certain summary information about those breach

1 findings and designated which of those claims were accepted
2 and which were rejected or still were the subject of
3 dispute.

4 Q Are you sure that has all of the misrepresentation of
5 income claims, sir?

6 A I think to the extent there were shared characteristics
7 it contains that universe.

8 Q Right. So it's a subset of the misrepresentation of
9 income claims to the extent you identified certain shared
10 characteristics, right?

11 A You know without looking at the entire report I don't
12 recall.

13 Q Okay. Maybe we can come back to that when we go on to
14 your expert report. But I will tell you that while the co-
15 borrower misrepresentation that we've been talking about is
16 listed in your Exhibit 17 the borrower misrepresentation is
17 not. So we only have one of the two in your Exhibit 17 to
18 look at.

19 And you can see that about two-thirds of the way down
20 this loan 7468 is on your excerpt in your binder, but we'll
21 also put it up on the screen to make it easy. So you can
22 see here that --

23 A Which page of the exhibit? I'm sorry.

24 Q Well it's -- I think you only have one page of an
25 excerpt of Exhibit 17 in that tab. And if you look at --

1 it's count 17645, you'll see the loan number ending 7468,
2 but we've also put it up on the screen.

3 A All right. Which tab is it? I'm sorry.

4 Q Thirty-four.

5 A Okay. That was my problem.

6 (Pause)

7 A Okay.

8 Q Okay. So you mentioned that Exhibit 17 is about
9 certain characteristics of these breach claims, right? Of
10 the misrepresentation of income breach claims?

11 A Yes.

12 Q And one of those characteristics is in that third
13 column over from the left on Exhibit 17 same year
14 evidence/near year evidence. And what does that mean, sir?

15 A It would be whether the evidence supporting the income
16 finding is in the same year of origination or a year near
17 the year of origination.

18 Q Okay.

19 A Either proceeding or subsequent to.

20 Q So in this case for this loan you cannot extract from
21 the factual basis for the defect in the claims tracking
22 spreadsheet the fact that the tax return, right, which is
23 the evidence is near year as opposed to something that's not
24 near, right? The factual basis just says post origination I
25 believe or post closing.

1 A Yeah, that would be in the claim file.

2 Q Okay. So --

3 A That was submitted along with the claim tracking
4 spreadsheet.

5 Q Right. So to get that -- you couldn't extract that
6 information from the claims tracking spreadsheet, you have
7 to look in the file?

8 A For this loan.

9 Q For this loan. Correct.

10 A Not the loan file, the claim package.

11 Q The claim package.

12 Okay. And Exhibit 17 also says that the claim is
13 supported by -- well it says that the borrower is salaried,
14 right, that's the next column over? You see that?

15 A Yes.

16 Q And in the description I think it says that the co-
17 borrower was employed with the same employer and employment
18 when the subject loan closed, although it doesn't
19 specifically say that she was salaried, right?

20 A Well if you have an employer you're generally viewed as
21 salaried.

22 Q Okay.

23 A If you're unemployed you're viewed as self-employed.

24 But no, it doesn't say salaried or self-employed in the
25 narrative.

1 Q Okay.

2 A That too would be information that could be gleaned
3 from either the claim package or the loan file or both.

4 Q Okay. Let's look at the claim package, which is tab
5 38. It should be tab 38.

6 A Thirty-eight?

7 Q Yeah. It's in the new package that you got this
8 morning.

9 A Okay.

10 Q Do you have it in front of you?

11 A Yes.

12 Q And can you see it says the plan package for the loan
13 ending in 7468?

14 A I'm more familiar with the page -- page 2 of 20 as --

15 Q Okay.

16 A -- the cover page for a claim package, but --

17 Q And I'll ask you when you're ready to turn to page 8 of
18 20, which I believe is the loan application.

19 (Pause)

20 A Okay.

21 Q Do you see that the loan closed on June 28th or at
22 least the application is dated June 28th, 2007?

23 A Yes.

24 Q And now I'm on Section 4, and Section 4 it says that
25 the co-borrower is a physician and the self-employed box is

1 checked. Do you see that?

2 A Yes.

3 Q Okay. So the information on Exhibit 17 that we just
4 looked at that the borrower is salaried is somewhat
5 inconsistent with checking the self-employed box, right?

6 A Maybe. I don't know if there's a misrepresentation of
7 employment with respect to this loan to or not.

8 Q There isn't, we saw all the misrepresentations and
9 there are only three and one is gone.

10 A Okay.

11 Q Yeah. Okay. So if you look at page 3 of 20, now I'm
12 going to take you back to the underwriting approval. You
13 see that? Do you see the underwriting approval?

14 A I do.

15 Q Okay. And do you see that borrowers credit score is
16 reflected on that document?

17 A Yes.

18 Q Do you see that they're 766 and 708?

19 A I see those as the middle scores for the borrower and
20 the co-borrower, yes.

21 Q Okay. And so even though the narratives reference the
22 utilization of credit they didn't reference those credit
23 scores which are pretty high, right?

24 A Well yes, one thing has nothing to do with the other.

25 Q Okay. If you also notice on that page you see there's

1 some subordinate financing? It's sort of on the left-hand
2 side about a third of the way down. One hundred and
3 seventy-eight thousand in subordinate financing?

4 A I see that --

5 Q Okay.

6 A -- column there. The notation.

7 Q So if we turn to -- back to the loan application and
8 we're on Section 6 for assets and liabilities. I'm sorry,
9 let's start with Section 7. And you'll see that the cash
10 required at closing was over 300,000. And if you subtract
11 the subordinate lien that indicates that the borrowers had
12 to put down well over \$100,000 for this loan, right?

13 MR. DAVIS: I hope my math is right, Your Honor.

14 THE WITNESS: Okay.

15 BY MR. DAVIS:

16 Q Okay. And is it also shows in Section 6 that the
17 borrowers had about 40- or \$50,000 of equity in real estate
18 by way of assets, right?

19 A I'm sorry, where are you?

20 Q Section 6, right above their loan application, assets
21 and liabilities. You see real estate owned at the present
22 market value of 795,000 and mortgage and liens of 333,000?
23 Do you see that?

24 A Yes.

25 Q So those are fairly significant assets which are as you

1 said are part of the story but they're not reflected in the
2 trustees' breach narrative, right? Correct?

3 A I don't know what the question is.

4 Q The borrower's assets are not reflected in the
5 trustees' breach narrative, correct?

6 A They're right here in the application.

7 Q In the breach narrative.

8 A No, the assets were not inconsistent with the analysis
9 that was done by the loan review firm.

10 Q So the assets were not inconsistent with a purported
11 salary of a physician of \$2,000 a month?

12 A No.

13 Q Okay.

14 THE COURT: I want to ask it a different way.

15 In the breach narrative there's a statement that
16 there was -- based on a tax return -- that there was a
17 misrepresentation of income, right? That's the headline in
18 the breach narrative. And the evidence cited is a tax
19 return. Mr. Davis asked you to confirm that you didn't
20 mention the next bit of the narrative which has to do with
21 the utilization rate of revolving credit, right? Remember
22 that question and answer?

23 THE WITNESS: That's in the narrative but it's not
24 in the evidence, yes.

25 THE COURT: Right. And you told Mr. Davis that

1 that's understandable because the utilization rate is not a
2 piece of data on which the breach is based, the tax return
3 being the primary piece of evidence, right?

4 THE WITNESS: Yes.

5 THE COURT: Okay. But now Mr. Davis is saying to
6 you the following, in the breach narrative you cited the
7 utilization of revolving credit as something that supported
8 the hypothesis that the borrower had lied about its income,
9 because why would somebody with the amount of stated income
10 that the borrower said he or she had have to use that much
11 credit, right?

12 THE WITNESS: Yes.

13 THE COURT: Okay. And now Mr. Davis is saying to
14 you, but wait, here's a piece of evidence that would be
15 consistent with the stated income because this borrower has
16 \$450,000 of equity in other real estate and he's asking you
17 to confirm that that piece of evidence cutting the other way
18 arguably also is not included, right?

19 THE WITNESS: Yes, and I disagree that it's
20 cutting the other way.

21 THE COURT: Okay.

22 THE WITNESS: You can't use equity in a piece of
23 property to pay a mortgage.

24 THE COURT: That's not my question, Mr. Aronoff.

25 The statement that the utilization of credit

1 bolsters the hypothesis that the borrower misrepresented his
2 income is one thing, but when you find that the borrower in
3 fact is a property owner with significant equity that might
4 suggest that this borrower has some means, particularly when
5 you look at it this way, the amount of equity in these
6 properties versus the amount of debt, it might, we don't
7 know, it might suggest that this borrower does have the
8 income that was stated.

9 THE WITNESS: I understand your analysis and just
10 respectfully as a mortgage loan underwriter --

11 THE COURT: Okay.

12 THE WITNESS: -- if this was cash in a bank
13 account that would go directly to the borrower's ability to
14 pay --

15 THE COURT: It's not --

16 THE WITNESS: -- and I don't think it's
17 dispositive one way or the other. It's a fact, but I don't
18 think it's contradictory to the finding and I don't think it
19 supports the finding.

20 THE COURT: We are not -- we're not talking about
21 the borrower's able to pay, we're talking about marshalling
22 all the available evidence as a forensic loan reviewer to
23 try to figure out what the borrower's income was, and all
24 I'm saying, which I guess you're not going to agree with my
25 observation, that on the one hand we have utilization of

1 credit, but on the other hand we have current mortgages and
2 significant equity, and you don't believe that the existence
3 of the ownership of two other properties showing significant
4 equity at all suggests that perhaps this borrower made on or
5 about as much money as he said he did. You don't agree with
6 that.

7 THE WITNESS: I don't agree with that, but having
8 said that I think it is important and it was important that
9 these loans not be underwritten or evaluated simply on the
10 short narrative, and that's why the claim package and the
11 loan files were submitted with each and every claim to give
12 the plan administrator the opportunity to do their own
13 review with their own experts and see if they could identify
14 facts that in fact proved we were wrong in our conclusion.

15 THE COURT: Yes. But to that point you're
16 perfectly fine with the fact that there was no narrative
17 that said but on the other hand there's also evidence in the
18 file of substantial equity owned by this borrower in other
19 properties with mortgages on which the borrower remains
20 current, that was not a piece of contrary evidence that you
21 felt might be useful to the plan administrator to evaluate
22 the claim.

23 THE WITNESS: I agree, yes.

24 THE COURT: Okay. Thank you.

25 BY MR. DAVIS:

1 Q Okay. Now let's turn to page 15 of 20 in the
2 application and you'll see a 2008 tax return.

3 A Fifteen of 20 in the claim package --

4 Q Yes.

5 A -- not the application.

6 Q We're in the claim package. Yeah.

7 A Okay.

8 Q I'm sorry, 15 of 20 in the claim package. And you
9 recall this loan was originated in 2007, so this is the
10 following year's tax return, right?

11 A Yes.

12 Q Okay. And it's the only tax return in the claim
13 package, so this is the tax return that the trustees were
14 relying on for the claim here, right?

15 A I don't know what other income information might be in
16 the file or not.

17 Q Okay. This is the only tax return in the claim
18 package. Are you with me?

19 A Okay.

20 Q Okay. So on line 7 of this tax return what does it say
21 that the borrower's combined wages are?

22 A Two zero eight five twenty-six.

23 Q Okay. And on line 12 it has a business income number,
24 do you see that?

25 A Yes.

1 Q And it has a calculation next to it, right?

2 A Yes.

3 Q And it's the loan review firm that drafted that
4 compilation, correct?

5 A It appears so.

6 Q And that number of rounded \$2,069, that is the alleged
7 co-borrower's income that was listed in the actual income in
8 the breach claim, right?

9 A I believe that's correct.

10 Q Okay. And there's another calculation on the bottom,
11 do you see that, in the box, 12 months equals almost
12 \$20,000?

13 A Yes.

14 Q That calculation was also done by the loan review firm,
15 right?

16 A Again, I don't know. It appears so, I don't know. I
17 don't know who did this calculation.

18 Q Okay. But that calculation or that number don't appear
19 anywhere in the claims tracking spreadsheet or on your
20 exhibits that we saw, right?

21 A No.

22 Q Okay. And jumping back up to the business income for
23 the moment it references a Schedule C. Do you see that? In
24 line 12.

25 A Yes.

1 Q But the Schedule C isn't attached here, right?

2 A It's not in the two pages I'm looking at. Again, I
3 don't know if it's elsewhere in the claim package or in the
4 loan file.

5 Q Okay. And in this case when the loan review firm did a
6 calculation of income based on this business income it
7 didn't add in any kind of depreciation, right?

8 A I don't know if there was any.

9 Q It just took the straight line business income reported
10 here and divided it by 12, right?

11 A It looks like they simply divided 24,827 by 12.

12 Q Okay.

13 A But I don't know if there was any depreciation to add
14 back in.

15 Q Okay. Because you need the Schedule C, right, to make
16 that determination, or some other document?

17 A I would need some evidence that there was in fact
18 depreciation, yes.

19 Q Okay. So now if you turn to the next page you will see
20 towards the bottom it says that the co-borrower is a medical
21 doctor. Do you see that?

22 A I see one of the parties to this tax return is a
23 medical doctor. I don't know -- yeah, I don't remember
24 which was the co and which the borrower.

25 Q Okay. That's the co-borrower.

1 A Okay.

2 Q But it doesn't say anywhere on this tax return who
3 employed this co-borrower does it?

4 A No, not in a tax return.

5 Q So that's inconsistent with the claim statement where
6 it says that the tax returns demonstrate she was employed
7 with the same employer and the same title, right?

8 A Was the tax return cited as the source of that or --

9 Q Yeah.

10 MR. DAVIS: Can we bring that up?

11 THE WITNESS: -- was it is basis for the use of
12 near year? Employers don't typically appear on tax returns
13 unless there's a W-2 or pay stub attached to it.

14 BY MR. DAVIS:

15 Q Right. If you look at the excerpt of the claim
16 tracking spreadsheet it says, "The loan file contained post
17 closing federal tax return that verified the co-borrower was
18 employed with the same employer and employment title as when
19 the subject loan closed on 6/25/2007." See that?

20 A Yes.

21 Q So that's a mistake, right?

22 A It's a mistake to say that that was verified on the tax
23 return. It was probably verified elsewhere in the file.

24 Q Now, turn to page 12 of the claim package. Can you
25 tell me what this is?

1 A It looks like an audit verification of employment and
2 income.

3 Q Do you know what kind of audit verification it is?

4 A I'm not sure I understand the question.

5 Q Do you know what this type of form is typically
6 referred to as?

7 A It's an audit VOE.

8 Q Do you understand that this is a work number
9 verification?

10 A I don't know if this is the work number.

11 Q Okay. Fair enough. It is the only audit verification
12 in the file -- or the claim file. Do you see that?

13 A Do I see what?

14 Q Do you see that it's the only audit verification in the
15 claim file that you have in front of you?

16 A That appears to be the case.

17 Q Okay. So if you turn to the last page you see another
18 one of those boxes there, which I believe is a calculation
19 by the loan review firm. Do you see that?

20 A Yes.

21 Q Do you see the box says around the year 2006?

22 A I see that.

23 Q Okay. So was the calculation conducted by using the
24 income in 2006?

25 A I don't understand the question.

1 Q Was the calculation in this box conducted by using the
2 2006 income that's reported here for the work number?

3 A It appears that they took that 90,884 number and
4 divided it by 12.

5 Q Okay. But this was a loan that closed in 2007, right?

6 A I don't know, but based on the application date, yes.

7 Q Okay. So it's not accurate to say that the income
8 verification is same year, right?

9 (Pause)

10 A Well they have same year right above it. Looks pretty
11 much the same.

12 Q It is incorrect.

13 THE COURT: They put the wrong year.

14 THE WITNESS: They picked the wrong box.

15 THE COURT: Mr. Aronoff, they picked the wrong
16 box.

17 THE WITNESS: They picked the wrong box it looks
18 like, yes.

19 BY MR. DAVIS:

20 Q Yeah. And by the way just the origination credit
21 report that we've spoken about is not in the claim file,
22 right? You don't see it here in the claim file?

23 A The origination credit report is not in the claim
24 package, that's correct.

25 Q Okay. So if we just look at the next slide just to

1 summarize what we've seen here. Looking at your Exhibit 4
2 excerpts starting with the borrower the actual monthly
3 income even based on the evidence that the trustees relied
4 on was inaccurate, right? Because they chose the wrong
5 year. And that makes the monthly differential and monthly
6 percentage inaccurate, correct?

7 A The values are wrong, but the conclusion doesn't
8 change.

9 Q Okay. And the conclusion doesn't change, so your
10 conclusion on this loan doesn't change whatsoever based on
11 what you've seen?

12 A Well not looking at the '07 income, which should have
13 been used.

14 Q I'm talking about the loan overall.

15 A Well based on this very limited insight into this loan
16 I don't see anything that leads me to believe that these
17 borrowers actually made anywhere near the income they
18 stated.

19 So I think the misrepresentation of income claim is
20 supported or the documentation of it at least with respect
21 to the claim tracking spreadsheet narrative was -- had some
22 factual errors in it, which we've identified by looking at
23 the very same documentation that was provided with the loan
24 that shows that in actuality there is a misrepresentation of
25 income here.

1 Q In your opinion, right?

2 A In my opinion.

3 Q Yeah. So just to complete the story the actual monthly
4 income of 2,069 for the co-borrower, the doctor, is clearly
5 incorrect based on what we saw, right?

6 A I don't remember saying it was clearly incorrect.

7 Q You don't remember seeing \$200,000 worth of income and
8 the number of \$31,000 worth of business income between the
9 two borrowers?

10 A I saw calculations of different income numbers on the
11 tax return, and the underwriter decided based on the
12 analysis of the loan file which income number was to be
13 used.

14 Q So the underwriter chose to ignore about \$100,000 worth
15 of wage income?

16 A No, that's not fair, and that's not what I'm saying.

17 Q Well the underwriter chose to use \$31,000 worth of
18 business income to calculate -- or something like that -- to
19 calculate this borrower's -- co-borrower's income, right?

20 A They used the income number that they believe looking
21 at the file reflected the borrower's income. And to the
22 extent this borrower was self-employed the gross business
23 income is not the appropriate number to use.

24 THE COURT: I'm sorry, I'm just beyond confused.
25 Beyond.

1 There was a tax return shown that showed \$280,000
2 of income, right? Right?

3 THE WITNESS: Yes.

4 THE COURT: I'm not -- right?

5 THE WITNESS: As a --

6 THE COURT: Okay. And in addition to that on the
7 tax return there was a business income of \$24,000, right?
8 Right?

9 MR. DAVIS: Correct.

10 THE COURT: Okay. And what the little boxes that
11 were drawn around the business income showed was that
12 somebody decided that they could take that \$24,000 and
13 multiply it by 12 and come up with a hypothetical income for
14 whom?

15 THE WITNESS: For this borrower for the prior
16 year.

17 THE COURT: For the self-employed physician for
18 the prior year?

19 THE WITNESS: That's what the numbers look like,
20 yes.

21 THE COURT: I just -- I just have no idea. I am
22 not following this at all.

23 So the total adjusted gross income is \$239,000,
24 right? And divided by 12 you get \$19,000, right?

25 THE WITNESS: Yes.

1 THE COURT: So where does that number come into
2 this analysis?

3 THE WITNESS: Your Honor, I'd have to look at the
4 whole file.

5 THE COURT: But on your -- on the chart some -- if
6 there's no relationship to anything on Exhibit 4 where
7 there's a represented monthly income of \$7,500, which is the
8 engineer in this couple, right, and which Mr. Davis showed
9 was based on choosing the wrong year, right? Right?

10 THE WITNESS: Yes.

11 THE COURT: Okay. And then now we're looking at
12 our physician, and for the physician somebody decided that
13 the actual monthly income was \$2,000 taking the \$24,000
14 number and dividing it by 2 -- by 12, right?

15 THE WITNESS: By 12, yes.

16 THE COURT: Okay. But where's all the -- where's
17 the rest of the income that's shown on the tax return?

18 THE WITNESS: Again, it was an '08 return, so I
19 would have to see if there is a reason in the file why the
20 underwriter believed that only the business income was this
21 borrower's applicable income in '07.

22 THE COURT: Well when you say the underwriter do
23 you mean the reunderwriter?

24 THE WITNESS: The reunderwriter, the loan --

25 THE COURT: Okay.

1 THE WITNESS: -- review firm, yes.

2 THE COURT: And do you think that as a hypothesis
3 you could have a physician who actually earned that much
4 money but that in some sort of a separate business had
5 business income?

6 THE WITNESS: Potentially, of course. Of course.

7 THE COURT: Go ahead, Mr. Davis. I'm just trying
8 to understand apples to apples here.

9 BY MR. DAVIS:

10 Q So just to complete the story if you look at your
11 Exhibit 17, right, it said that the tax return that it was
12 relying on was near year and in fact it was, but you could
13 not determine that from the claims tracking spreadsheet,
14 right, you had to go to the file.

15 A Okay.

16 Q And it said that the co-borrower was salaried and yet
17 it took a self-employed income for the co-borrower, right?

18 A Yes, and the borrower checked self-employed on the box
19 on the application.

20 Q And it said that the co-borrower's monthly income was
21 \$2,069. Are you standing behind that number? Is that your
22 opinion based on what you've seen from this claim package
23 that this co-borrower, who was a physician, was earning
24 \$2,069 a month based on what you've seen?

25 A I can't make a determination based on what I've seen.

1 Q Okay. And to the extent that you can't make a
2 determination about that you can't make a determination
3 about whether the monthly nominal difference or the monthly
4 percentage difference in your Exhibit 17 are accurate,
5 right?

6 A Well I think the math is accurate if the 2,069 is
7 accurate.

8 Q You just told me you couldn't make a determination.

9 A Right.

10 Q So my question is if you can't make a determination
11 then you can't also determine whether the monthly nominal
12 difference or the monthly percentage difference are
13 accurate, right?

14 A That's right.

15 MR. DAVIS: This would be a good time to take a
16 break if it's all right.

17 THE COURT: It would. All right. Why don't we
18 take a broke for about 15 minutes and then we'll do one more
19 segment before the lunch break. All right?

20 MR. DAVIS: Thank you.

21 THE COURT: So I can't exactly see, a little bit
22 after 20 minutes after the hour. All right? Thank you.

23 (recessed at 12:07 p.m.; reconvened at 12:27 p.m.)

24 THE COURT: Please have a seat. I apologize for
25 the disturbance. It's a tradition that when one of my

1 daughters gets into a professional school or gets an amazing
2 job they call me and I scream --

3 (Laughter)

4 THE COURT: -- such that one time when my daughter
5 got into medical school the marshals came running --

6 (Laughter)

7 THE COURT: -- to make sure that no one was
8 attacking me.

9 So I apologize. I'm happy to share this very good
10 news with you that my daughter got a job.

11 (Laughter)

12 THE COURT: Got a very, very amazing job. So I
13 told her you all said congratulation. She's in the middle
14 of an arraignment shift in the Bronx, so it's a busy day. I
15 apologize. Okay.

16 BY MR. DAVIS:

17 Q Okay. Mr. Aronoff, can you open to tab 4 again in your
18 binder. Just again that excerpt of Exhibit 4.

19 (Pause)

20 Q Okay. And just looking at the first page for
21 illustrative purposes there are some rows in red, right?

22 A Yes.

23 Q And I think you testified last week that the red color
24 denotes examples of accepted loans, loans that were accepted
25 by the plan administrator, right?

1 A Yes.

2 Q And in your report you say that the plan
3 administrator's acceptance of loans with a misrepresentation
4 of income breach claim, such as those that are in this
5 exhibit here, support the validity of this type of breach
6 finding and the types of evidentiary support used to assert
7 claims for this type of breach finding. Do you remember
8 that opinion?

9 A I remember statements to that effect, yes.

10 Q Okay. But I think as you testified in response to the
11 Court's questions last week you have to look at the totality
12 of the loan file to understand whether and to what extent
13 loans that share some characteristics can be compared with
14 one another. Is that fair?

15 A I don't think the context was comparison, I think it
16 was to make the actual determination as to whether there's a
17 breach finding or not I talked about looking at the totality
18 of the file, yes.

19 Q Okay. So in the context of making an actual breach
20 finding you do have to look at the totality of the file,
21 right?

22 A We tried to do that, yes.

23 Q Okay. So to be clear by highlighting these accepted
24 loans you're not saying that just because the plan
25 administrator accepts one misrepresentation of income claim

1 it should accept them all, right?

2 A I don't think I came close to saying that, no.

3 Q And you're not saying that because the trustees based
4 one misrepresentation of income claim that was accepted on a
5 particular kind of evidence like a bankruptcy filing, for
6 example, the plan administrator therefore should accept all
7 misrepresentation claims based on bankruptcy filings, right?

8 A I stand by the language in my report and that's not --
9 I didn't say what you just said, no.

10 Q Okay. Let's take a look just again illustrative
11 purposes the column that says represented monthly income.
12 Do you see that?

13 A Yes.

14 Q Now, based on what's in this chart you can't tell me
15 here whether the income reflected is only the gross monthly
16 income or could include some other component of such income;
17 is that right?

18 A I don't know how to distinguish, gross monthly income
19 would include other components of income if they were there.
20 So I don't know -- it was an either or, I don't know how to
21 answer it.

22 (Pause)

23 MR. DAVIS: So I'd like to read page 402,
24 beginning at line 6, ending at line 18.

25 BY MR. DAVIS:

1 Q Question, "What information is reflected in column C?"

2 Answer, "That will be stated income, the income
3 represented by the borrower in almost every case on the
4 application."

5 Question, "Is it the gross monthly income?"

6 Answer, "It may be. It may include other components of
7 income that was used to underwrite the loan."

8 Question, "So it just depends on the file?"

9 Answer, "It in every case depending specifically on the
10 file."

11 Did I ask those question and did you give me those
12 answers?

13 A Yes, and I think that's consistent with what I just
14 said.

15 Q Okay. And there's a column the second from the right
16 is the evidence side column, do you see that?

17 A Yes.

18 Q Now, I think as we kind of saw an example of already
19 that was just the primary evidence in support of the claim,
20 right?

21 A Yes.

22 Q And you have to look at the file to see if there's
23 additional evidence in support of the claim, right?

24 A Not necessarily. I think in every case the primary
25 evidence in and of itself is sufficient, but to understand

1 the -- to try and understand and recreate the thought
2 processes and the analysis done by the forensic loan
3 reviewer I would advise anyone evaluating that work to look
4 at the totality of the file as well.

5 Q Okay. So -- yeah, so I'm not talking now about the
6 forensic loan reviewer's opinion, I'm talking about your
7 opinion as reflected in these exhibits, right? Because
8 these exhibits reflect your opinions on each and every row
9 and that's the subject of your report, right?

10 A What's the question?

11 Q Do these exhibits reflect your opinion on each and
12 every loan that's the subject of your report?

13 A They reflect the information on which I base my
14 opinions, yes.

15 Q And you would have to look at each file to see if there
16 were some evidence aside from your primary evidence that's
17 listed here that supports the claim; is that right?

18 A No.

19 (Pause)

20 THE COURT: Mr. Davis, could you go back two,
21 maybe three questions?

22 MR. DAVIS: Okay.

23 THE COURT: I don't know if you have it on your
24 little screen there. Was the question to Mr. Aronoff
25 whether this exhibit reflects his opinion on each and every

1 loan?

2 MR. DAVIS: Yes.

3 THE COURT: And what was the answer?

4 THE WITNESS: They reflect the information on
5 which I base any opinions.

6 THE COURT: So is the answer to Mr. Davis'
7 question no, it does not reflect your opinion on each and
8 every loan?

9 THE WITNESS: The exhibits don't have a conclusion
10 or an opinion in them, so I view it as I've opined that each
11 and every breach finding is the subject of my report
12 breaches the applicable rep and is material and adverse and
13 I've tried to provide in excruciating detail certain
14 information with respect to those loans on which I rely to
15 provide those opinions.

16 THE COURT: Okay. I'm -- I just want to
17 understand on the exhibit that's up on the screen, this loan
18 number count 1, loan ending 0294, does that reflect your
19 opinion that for that loan there's a misrepresentation of
20 employment and there's a -- I'm sorry -- income -- a
21 misrepresentation of income, a misrepresentation of
22 employment, and excessive DTI breach for this loan?

23 THE WITNESS: Yes, but again, semantics. It's not
24 exhibited here, this is a reflection of that. Exhibit 15 is
25 really where all that information and -- is expressed as

1 these are the loans and the breach findings that are the
2 subject that I'm opining on, these are the types of breach
3 findings with respect to those loans.

4 So yes, with respect to the data that you just
5 extracted from Exhibit 4 I am opining that this loan has a
6 misrepresentation of income breach, that's why it's on
7 Exhibit 4, and it also contains these other breach findings.

8 THE COURT: Okay. Thank you.

9 BY MR. DAVIS:

10 Q And the evidence type column doesn't show other
11 corroborating evidence that you say may exist in any given
12 file, right?

13 A It may or may not.

14 Q And the only way you could tell the difference is if
15 you go into the file and look to see, right?

16 A The claim package or the loan file, yes.

17 Q Okay. And the evidence type column doesn't list any
18 information in the loan file that may be inconsistent with
19 the claim, right?

20 A That's correct.

21 Q So to identify any inconsistent evidence that might
22 exist on any one of these breach claims you have to go into
23 the loan file, right?

24 A Yes; however, to the extent there was sufficient
25 inconsistent information in the view of the forensic loan

1 reviewer the claim never would have been made.

2 Q Yeah. And in your view as well? Is that your opinion
3 that none of these claims would have been made if there were
4 sufficient inconsistent evidence?

5 A Yes.

6 Q Okay. And so in your view for all of the 100 plus
7 thousands claims on all of these 72,000 loans had
8 insufficient inconsistent information to suggest that maybe
9 the claim is invalid?

10 MR. SHUSTER: Objection to form. I don't --
11 objection to form. I don't understand the question.

12 THE COURT: Okay. Try it again, Mr. Davis.

13 BY MR. DAVIS:

14 Q So it's your view that on all of the 100,000 plus
15 claims that are the subject of your report there is
16 insufficient inconsistent information in the loan file to
17 suggest that the breach claim is invalid?

18 A Well let me try and answer it this way and tell me if
19 it appearances your question because there are too many
20 double negatives for me.

21 The guidance was given was we want the loan reviewers
22 to be thoughtful and fair and not cherry-pick data and try
23 and find a breach based on a single piece of data. That's
24 not helpful to anyone, particularly me offering the opinion.

25 The guidance was look at the totality of the file. To

1 the extent you find information that may support a breach
2 maybe sure that in the context of the whole file there's not
3 inconsistent information that outweighs that. To the extent
4 there was inconsistent information that outweighed the
5 information that may in isolation support a breach finding
6 those claims were not brought under the protocol.

7 So to the extent there is what appears to be
8 inconsistent information in a file with a claim that appears
9 to contradict the basis for that claim there was a
10 subjective judgment made that although on its face this
11 information may appear inconsistent it didn't rise to the
12 level of undermining the ultimate decision that there was in
13 fact sufficient evidence to support a breach finding.

14 Q And that subjective determination regarding the weight
15 of inconsistent information for evidence is not reflected
16 anywhere on your exhibits, correct?

17 A Other than in the results.

18 Q Okay. And that subjective determination that the
19 inconsistent information in a given file was insufficient to
20 outweigh the evidence in support of the breach claim, that
21 analysis is not in the breach claim submissions by the
22 trustees either in the narratives, right?

23 A No, nor to my understanding wasn't required to be.

24 Q Now, if you take an example of an evidence type such as
25 a tax return you can't tell from looking at this chart

1 either whether there were one tax return that the trustees
2 were relying on or multiple tax returns, right?

3 A As I said, I think that the evidence type by itself
4 that's cited for each breach finding is sufficient to
5 support the claim. As to whether it was the sole factor in
6 reaching the conclusion there may be more information that's
7 available in the file that supports that conclusion.

8 Q Yeah, I'm just asking a much simpler question, which is
9 where it says here tax return, right, does that indicate
10 there's a single tax return supporting the breach
11 determination or multiple tax returns or you can't tell?

12 A It indicates there's at least one tax return that
13 supports the tax finding.

14 Q Okay. So there could be multiple tax returns but in
15 order to do that you'd have to open up the claim file or the
16 loan file, right?

17 A Yes.

18 Q And when you're looking at the actual monthly income
19 column on this chart if you wanted to answer the question
20 whether the loan review firms were taking into account in
21 that calculation some kind of a side business that the
22 borrower might have you'd also have to look at the claim
23 file or the loan file, right?

24 A It depends. To the extent the evidence type cited
25 contained all of the sufficient information for the

1 analysis, no. But to the extent it didn't then yes.

2 Q Yeah, so I'm not talking about the evidence type now
3 per se, I'm talking about what's in the third column. And
4 sorry if I wasn't clear about that.

5 So we're on the third column represented monthly income
6 and that's the column where the loan review firm entered
7 data about what they said the borrower was representing
8 their income as, correct?

9 A Yes. In almost every case that would come from the
10 application.

11 Q Okay. And in the actual monthly income that's the
12 column where the loan review firms made a determination that
13 based on whatever evidence they were using it was less than
14 the represented monthly income, right? For purposes of this
15 misrepresentation of income chart.

16 A Yeah, I think the determination they made was that this
17 is the income which is supported in the file that is other
18 than the stated income.

19 Q Okay. But this chart itself doesn't tell you how they
20 made that determination. You can't tell from this chart
21 what components of the borrower's actual monthly income the
22 loan reviewers were counting when they calculated actual
23 monthly income, right?

24 A That's correct.

25 Q Okay. So, for example, you'd have to look at the loan

1 file to see in the firms were taking into account things
2 like alimony or child support, right?

3 A Yes.

4 (Pause)

5 Q And I'm sorry, so back to the evidence type column
6 again, you can't tell where it says tax return whether that
7 tax return is complete, right?

8 A No. If I understand what you mean by complete, no.

9 Q Meaning it has all it constituent parts, that's what I
10 mean by complete.

11 A As we discussed in prior dates some of these tax
12 returns are complete for the purposes for which they're used
13 because there's other corroborating information to show that
14 the information we're gleaming from it is reliable. But no,
15 you can't tell whether it's signed or dated or has other
16 features of I think what you mean by complete.

17 Q Right. From this chart you'd have to go into the loan
18 file to figure that out, right?

19 A Yes.

20 Q And similarly where the evidence type is a W-2 that
21 could mean one W-2 or it could be multiple W-2s, right?

22 A Yes.

23 Q You'd have to go into the loan file to look at that,
24 right?

25 A To look at whether the claim was based simply on the

1 one that's cited, which would be sufficient, or if there
2 were other ones that corroborate the single W-2, yes, you'd
3 have to go into the file to determine that.

4 Q Well sometimes the claims cite more than one W-2 don't
5 they?

6 A I don't know. I don't know what the -- I mean I just
7 -- I saw W-2, I don't know if the evidence type ever listed
8 nine W-2s or not.

9 Q Yeah. I mean I guess I didn't ask about nine W-2s. I
10 just asked whether sometimes you were citing multiple W-2s
11 as the primary evidence to your claim. Do you know?

12 A I don't recall.

13 Q Okay. And you can't tell from seeing the term W-2
14 listed in this evidence type how exactly the loan review
15 firm took that W-2 and calculated actual monthly income,
16 right, you have to look at the loan review -- you have to
17 look at the file?

18 A I'm not sure I understand the question.

19 Q Well you can't tell how the calculation was made by
20 using the W-2 can you, by just the fact that a W-2 was used?

21 A There's fairly discrete well labeled information on a
22 W-2, but I guess no is the answer to your question, you
23 can't.

24 Q Okay. So let's talk about third-party information a
25 bit. The loan review firms consulted what you called in

1 your testimony last week third-party information sources in
2 connection with their breach findings, right?

3 THE COURT: Can you hold on one second? Mr. Davis
4 and Mr. Shuster, could you come up for a second?

5 (At sidebar off the record)

6 THE COURT: So this is about lunch, nothing about
7 -- I got a thumbs up from the witness. I'm very observant I
8 think, Mr. Aronoff.

9 So we're going to come back. We're going to cheat
10 it by an hour by five minutes and we're going to try to
11 start up again at a quarter to 2:00, because everyone is
12 determined to say goodbye to you today.

13 THE WITNESS: And I'll be less cranky after I have
14 something to eat.

15 THE COURT: Your crankiness was not in the
16 record --

17 (Laughter)

18 THE COURT: -- but let's call it lunch and we'll
19 see you at a quarter to 2:00. All right?

20 THE WITNESS: Thank you.

21 MR. DAVIS: Thank you, Your Honor.

22 (Recessed at 12:52 p.m.; reconvened at 1:50 p.m.)

23 THE COURT: Okay.

24 BY MR. DAVIS:

25 Q Okay. Mr. Aronoff, I just want to start briefly with

1 your -- just the detail of your biography. So I think you
2 said that you left Duff & Phelps in December of 2015; is
3 that right?

4 A Yes.

5 Q And after you left Duff & Phelps from December 2015
6 through May of 2016 you had nothing to do with the loan
7 reviewers in this case, right?

8 A Yes.

9 Q So you weren't involved in overseeing the loan
10 reviewers during that period of time, right?

11 A That's correct.

12 Q So when we're talking about third party sources that
13 you discussed in your testimony last week, Mr. Aronoff, do
14 you know how many loans passed through the protocol in the
15 time period between December 2015 and May of 2016?

16 A No.

17 Q To your knowledge did Duff & Phelps -- strike that.

18 To your knowledge Duff & Phelps did not provide the
19 loan review firms with a list of third party sources they
20 were permitted to use, right?

21 A To my knowledge that's correct.

22 Q And you don't know whether the loan review firms
23 reviewed third party sources for every loan amount, right?

24 A That's right.

25 Q And you didn't put into place any policy or procedure

1 that required the loan review firms to give Duff & Phelps
2 all of the information that they gathered from third party
3 sources in connection with any given loan, right?

4 A That's right. That -- and that policy did not ask for
5 everything potentially as consistent with industry custom
6 and practice.

7 Q Okay. I'm not sure what policy you're referring to
8 because, in fact, you didn't put into place any policy and
9 procedure that required the loan review firms to give Duff &
10 Phelps all of the information they gathered from third party
11 sources, right?

12 A Yes. And not requiring them to do that was consistent
13 with industry custom and practice.

14 Q And what industry you referring to?

15 A Forensic loan reviews of -- forensic loan reviews with
16 the purpose of determining conformity with reps and
17 warranties and private label RMBS transactions.

18 Q Okay. And, in fact, you understood that the loan
19 review firms were not passing all of the third party
20 information they collected to Duff & Phelps, right?

21 A Yes.

22 Q The only time you would know what the loan review firms
23 did with the third party information they collected was if
24 they used that information to support a breach claim, right?

25 A Initially, yes.

1 (Pause)

2 Q What the loan review firms did with third party
3 information in those cases where that information -- where
4 the information in the file was accurate or they didn't feel
5 the third party tool provided them with the necessity
6 clarity -- necessary clarity of decisioning (sic) that they
7 needed, you don't know what they did with the third party
8 information, right?

9 A Can I hear that question again, please?

10 Q Sure. What the loan review firms did with third party
11 information in those cases where the information in the loan
12 file was accurate or they didn't feel the third party tool
13 provided them with the necessary clarity of decisioning
14 (sic) you don't know, right?

15 A Unless the loan review firm provided a third party tool
16 they used in support of a breach claim they were asserting
17 we didn't see what they pulled or if they pulled third party
18 tools.

19 Q Now, Mr. Aronoff, the trustees at times submitted
20 breach claims that relied on one piece of evidence to
21 support the claim, right?

22 A I believe so. Yes.

23 Q And in cases where the claim rested on a single piece
24 of evidence, that claim would only be brought if there was
25 no information that could reasonably be interpreted to

1 contradict that single piece of evidence in the loan file,
2 right?

3 A With sufficient weight to make that document not say
4 what it was purported to say. There may have been
5 information that one could say appears to contradict it, but
6 in the judgment of the forensic reviewer and our QC the --
7 it was not sufficient to override for lack of a better term
8 the evidence that was used to support the breach claim.

9 Q But in such a case the loan application would not be a
10 piece of contradictory evidence, right?

11 A The loan application was in most cases the data point
12 that was being audited.

13 Q So to the extent you found a single piece of evidence
14 of the kind you've been testifying about, a same year tax
15 return, for example, that contradicted the income stated on
16 the loan application you could and at times did conclude
17 that the income reflected in that single source would be
18 sufficient to prove the breach claim, right?

19 A Yes.

20 Q Now the standard form mortgage loan application during
21 the relevant period asked borrowers to provide their gross
22 monthly income, correct?

23 A Yes. I believe so.

24 Q And in your view gross monthly income means one-twelfth
25 of the borrower's annualized income, right?

1 A Yes.

2 Q And in your experience it's not common for a lender and
3 a borrower to have a discussion about how to interpret the
4 phrase, gross monthly income, for purposes of the loan
5 application, right?

6 A Yes. It's not usually the subject of a tremendous
7 amount of misunderstanding.

8 Q In fact, your view is that it would be unreasonable for
9 a borrower to inquire whether the gross monthly income
10 they're supposed to provide on the loan application is to be
11 projected for the current year or based on the prior 12
12 months or something else, right?

13 A I don't know if it's unreasonable for the borrower to
14 ask the question, but in my experience they often know what
15 their income is.

16 THE COURT: But, Mr. Aronoff, just as a matter of
17 taking a random example, do you think it's obvious if
18 somebody has -- supplements their income by occasional, I'm
19 trying to think of something, I don't know back in the good
20 old days selling Tupperware or babysitting for the
21 neighbor's child or something like that? Do you think it's
22 clear to a borrower how to treat that for the purposes of
23 the loan application?

24 THE WITNESS: I think it is, but I think to the
25 extent the borrower had additional sources of income in

1 addition to their base income it wouldn't be unreasonable to
2 ask, should I include babysitting or should I include
3 tutoring to the extent they want that considered. But that
4 -- there are appropriate spots on the application to include
5 that type of income.

6 THE COURT: Okay.

7 BY MR. DAVIS:

8 Q So I would like to read page 310, line 18 to 311, line
9 9.

10 A Can you give me one second to get --

11 Q Sure. Take your time.

12 (Pause)

13 Q "Question: So you don't think it's reasonable for a
14 borrower to ask whether the gross monthly income they
15 are supposed -- they are asked to provide here is supposed
16 to be projected for the current year or based on the prior
17 12 months or something else?"

18 "Answer: No."

19 Did I ask that question and did you give that answer?

20 A Yes.

And that doesn't deal with the components of the
21 income. It deals with if they should use their income from
22 ten years ago versus their current income. And I think it's
23 pretty clear if you want a loan and someone's asking how
24 much you get paid you use your current income to the best
25 you know what that is.

1 Q And your opinion is that the term gross means the same
2 thing for a self-employed borrower as it does for a salaried
3 borrower, right?

4 A Yes.

5 Q But whether a self-employed borrower is supposed to
6 report his business income really depends on their tax
7 status and corporate structure, correct?

8 A What an individual's gross income is, yes, depends on
9 how much they -- whether they take all or some of the
10 business income that is attributed to them. And just
11 looking at their business income doesn't necessarily tell
12 you what the borrower's gross income is. That's correct.

13 Q Right. So in part it depends on tax status and
14 corporate structure of the borrower, right?

15 A To determine the gross income, yes.

16 Q And you also understand that a self-employed borrower's
17 income is less predictable and more subject to variability
18 than the salaried employee, right?

19 A It may be.

20 Q But in your experience most borrowers don't have a
21 problem understanding what their gross monthly income is for
22 purposes of filling out the loan application, right?

23 A That's my experience.

24 Q And in your view determining gross monthly income is a
25 simple calculation, right?

1 A For most borrowers it is, yes.

2 Q And your position is that anyone who is applying for a
3 loan that doesn't understand what their gross monthly income
4 is probably shouldn't get a loan because they probably won't
5 understand what the monthly payment obligation on a loan is,
6 correct?

7 A I still believe that.

8 Q In your opinion only in the litigation context could
9 there be some confusion over how to calculate gross monthly
10 income, right?

11 A As to what it means on a 1003, yes. A 1003 is a loan
12 application.

13 Q Mr. Aronoff, you testified last week about breach of
14 occupancy claims. Do you recall that?

15 A Yes.

16 Q And you said that sometimes the trustees relied on
17 occupancy affidavits to support those claims because they
18 contain different terms than are provided in the deed of
19 trust of mortgage, right?

20 A I'll -- yes.

21 Q And the standard form in trust typically provided for a
22 promise to occupy except in the event of extenuating
23 circumstances, right?

24 A Yes.

25 Q And you say in your reply report that in many instances

1 where the plan administrator has identified extenuating
2 circumstances the borrower completed an occupancy affidavit
3 that contains an unqualified occupancy commitment without
4 extenuating circumstances; is that right?

5 A Yes.

6 Q So if there's a loan file that has an occupancy
7 affidavit that doesn't contain extenuating circumstances
8 exceptions and also provided that a breach of a promise
9 would constitute a default under the deed of trust, the
10 trustees might bring a misrepresentation of occupancy claim
11 even if there were extenuating circumstances present,
12 correct?

13 A Yes.

14 Q Now some of the occupancy affidavits do contain
15 extenuating circumstances exceptions, right?

16 A They may. I don't recall seeing any that had that
17 language in it.

18 Q Take a look at page -- Tab 39 in your big binder. This
19 is PA Exhibit 0033 --

20 THE COURT: Mr. Aronoff, it's in the additional --

21 MR. DAVIS: -- -A.

22 THE COURT: -- packet that Mr. Davis gave you this
23 morning.

24 THE WITNESS: Yeah. I threw it into the binder
25 because there's too much moving stuff on this table.

1 THE COURT: I agree.

2 (Pause)

3 THE WITNESS: Thank you.

4 BY MR. DAVIS:

5 Q Do you recognize this as an occupancy affidavit of the
6 sort we've been discussing?

7 A It's a -- it appears to be an occupancy affidavit.
8 It's not the typical form, but it -- I'll -- it is what it
9 says it is, I'll assume.

10 Q And it does contain an extenuating circumstances
11 exception. Do you see that in the tab marked 2 where the
12 box is checked?

13 (Pause)

14 A This isn't really the same thing as the language that
15 appears in the mortgage.

16 Q It's not the same thing as what? I'm sorry. I
17 couldn't hear you.

18 A As the carve out in the standard form mortgage which
19 says -- this talks about the borrower is unaware of any
20 events or circumstances that would impair their ability to
21 fulfill the loan obligations.

22 THE COURT: I'm sorry. Where are you reading from,
23 Mr. Aronoff?

24 THE WITNESS: Am I in the wrong paragraph? I'm in
25 three.

1 MR. DAVIS: No. You should be in two.

2 THE WITNESS: Oh, sorry.

3 MR. DAVIS: And it's on the screen, or it was on
4 the screen.

5 THE WITNESS: I see it. Yeah. That -- that tracks
6 pretty closely to the language of the mortgage.

7 MR. DAVIS: Okay.

8 BY MR. DAVIS:

9 Q And so as it turns out some occupancy affidavits do
10 provide exceptions for extenuating circumstances, right?

11 A Yes.

12 Q And some occupancy affidavits, while they may not
13 provide an exception for extenuating circumstances, they
14 don't expressly say that a breach of the affidavit or the
15 promise in the affidavit will constitute a default under the
16 deed of trust, right?

17 A They may. I'm not aware of those types of affidavits
18 in this deal. Those would have been two important
19 considerations for any loan reviewer is that to the extent
20 there were extenuating circumstances to make sure that the
21 affidavit didn't include them. If it did, that wouldn't be
22 the -- a basis for a breach.

23 And, similarly, if the analysis was that there was not
24 a breach of the mortgage and there was only a breach of the
25 affidavit, but the affidavit didn't result in a breach of

1 the mortgage or note, then there wouldn't be the underlying
2 threshold fact for a breach of the note and fault rep.

3 Q Okay. So in your view the affidavit would have to say
4 both that extenuating circumstances don't apply or omit, I
5 suppose, and that a breach of the affidavit would constitute
6 a default under the deed of trust in order to essentially
7 override the terms of the deed of trust?

8 A To result in a breach of solely the no default rep. It
9 still may result in a breach of the no untrue statement rep.

10 Q Now the Court asked you a question last week regarding
11 what happens in the event of a conflict between the
12 affidavit and the deed of trust. Do you remember that
13 question?

14 A Yes.

15 Q And you understand that the mortgage industry is a
16 highly regulated industry under both federal and state law,
17 right?

18 A Yes.

19 Q And when you were approving breach of occupancy claims
20 based on affidavits with terms different than the deed of
21 trust you didn't seek any legal opinion concerning whether
22 under the laws that governed that particular loan in that
23 particular state under those laws the affidavit could, in
24 fact, override the deed of trust, did you?

25 A No. I didn't make a legal determination as to the

1 efficacy of the affidavit. I used industry custom and
2 practice and my experience that -- that the affidavit signed
3 by a borrower is taken for what it says and that a lender
4 can declare a default based upon the terms of the affidavit
5 being violated if that's in the affidavit.

6 Q And you didn't seek any legal opinion on that subject,
7 did you?

8 A I personally did not. No.

9 Q Okay.

10 THE COURT: But can I just ask one more on this?
11 So if the deed of trust has no extenuating circumstances
12 exception, but the affidavit does, and there are extenuating
13 circumstances, is there an occupancy default or not? The
14 deed of trust says thou shalt occupy. The affidavit says
15 thou shalt occupy unless extenuating circumstances.

16 THE WITNESS: Given the priority that I've
17 attributed to the affidavit, in that case we would have to
18 give benefit to. I mean, your question last week troubled
19 me because I thought there was no notwithstanding or any
20 language, but there isn't. It's just --

21 THE COURT: Well, I'm --

22 THE WITNESS: -- as a matter of course from an
23 industry standpoint, not from a legal standpoint, the
24 affidavit is viewed as controlling and overriding similar
25 language in the mortgage.

1 So given your hypothetical we would have to look
2 for an exception because of the affidavit containing it
3 regardless of whether or not the mortgage did.

4 THE COURT: Okay.

5 THE WITNESS: We can't have it both ways. But in -
6 -

7 THE COURT: Okay. I -- you know, I'm just speaking
8 hypothetically --

9 THE WITNESS: Yes.

10 THE COURT: -- because my recollection, and we can
11 stop on this, but my recollection from when I asked the
12 question before was not the same as the testimony that you
13 gave now. But the record speaks for itself. So we can move
14 forward.

15 THE WITNESS: Yeah.

16 THE COURT: So right now you're saying that the
17 affidavit not based on legal opinion, but based on what's
18 customary in the industry, the affidavit would trump so to
19 speak the deed of trust?

20 THE WITNESS: Yes, Your Honor. I think the
21 confusion is that it was the other way around last time;
22 that the mortgage contained the exception and the affidavit
23 did not.

24 THE COURT: Right. Thank you. Okay.

25 BY MR. DAVIS:

1 Q Mr. Aronoff, let's go to your opening report at page
2 31. So I'm sorry to say I think that's in a different
3 binder.

4 (Pause)

5 Q Are you with me on page 31?

6 A Yes, I am.

7 Q Okay. And here you set out an example of the no
8 default representation, right?

9 A Yes.

10 Q Okay. And you say here that the no default
11 representation is that there is no -- there was no default
12 breach violation or event of acceleration existing under the
13 mortgage or the related mortgage note or any event which
14 would constitute any of those things with the passage of
15 time, right?

16 A Yes.

17 Q And then below you set out an example of a mortgage,
18 right, continuing it onto page 32, correct?

19 A Yes.

20 Q And the mortgage speaks of default in the event of
21 materially false, misleading or inaccurate information or
22 statements by the borrower to the lender, right?

23 A Yes.

24 Q And in your view the materiality that's being
25 referenced in the mortgage speaks to whether the information

1 was omitted or misstated would be material to the decision
2 of the lender to provide credit or make a loan to that
3 borrower, right?

4 A Yes.

5 Q So in your view only information that was misstated
6 that's material to the credit decision on the underlying
7 loan would provide a breach of this covenant, right?

8 A Yes. The credit risk of the loan.

9 Q And if this covenant were breached that, in turn, would
10 result in a breach of the no default representation, right?

11 A Yes.

12 Q And the breach of the no default representation would
13 be subjected to the same standard that every other breach
14 finding would be subjected to which is whether that breach
15 materially and adversely affects the value of the loan or
16 the interest of the certificate holders, right?

17 A Yes.

18 Q Okay. Now let's look at page 34. And there you set
19 out an example of what you refer to as the no untrue
20 statement representation, right?

21 A Yes.

22 Q And that representation in your view in the next
23 sentence there provides that where it is discovered that the
24 borrower made a material -- made a misrepresentation of a
25 material fact at the time the loan was originated or omitted

1 to state a material fact the representation and warranty is
2 breached, right?

3 A Not quite.

4 Q Okay. Did I --

5 A It doesn't have to be --

6 Q -- botch the reading?

7 A -- something the borrower states. It's that the
8 documents, instruments and agreements submitted for loan
9 underwriting don't contain those problems.

10 Q Okay. Either a misrepresentation of material fact or
11 an omission of material fact, right?

12 A Yes.

13 Q Okay. And, again, so in your view in the context of
14 the no untrue statement representation material also means
15 material to the credit decision, right?

16 A Yes.

17 Q And a breach of the no untrue statement representation
18 also is subject to a determination of an AMA, right?

19 A I'm sorry. Can I hear that again?

20 Q And a breach of the no untrue statement representation
21 also is subject to a determination of AMA --

22 A Yes.

23 Q -- right?

24 A All breaches are.

25 Q Okay. So I want to focus now not on AMA but on

1 materiality under the two representations that we just
2 discussed.

3 A Okay. I'm with you.

4 Q Okay. So let's talk about misrepresentation of income.
5 In your view even a misrepresentation of income of less than
6 five percent would be valid, right?

7 A In my personal view or --

8 Q In your opinion?

9 A That wasn't the opinion here. No. In my personal view
10 it would, but we imposed a tolerance around so that -- so
11 that the trigger wasn't as severe as it would be if there
12 was no trigger.

13 But any misrep of income was not cited as a breach
14 finding here. At a minimum it had to be five percent and
15 then depending upon certain other factors it might have been
16 even greater.

17 Q So your opinion is that it would be a breach, but you
18 didn't assert that kind of a claim here in this case?

19 A No. My opinion in this case is clear that a
20 misrepresentation of income of the type described that was
21 cited would result in a breach of these loans with respect
22 to these reps and warranties.

23 Q So in your view is not that a misrepresentation of an
24 income less than five percent would still be a valid breach
25 in this case?

1 A Not in this case.

2 MR. DAVIS: Your Honor, I would like to read pages
3 606, line 22 to 607, line 12.

4 BY MR. DAVIS:

5 Q In your deposition the trustees' counsel asked you:

6 "Do you have a view as to whether a misrepresentation
7 of income that was less than five percent would still be a
8 valid breach?

9 "Answer: Yes.

10 "Question: What's your view?

11 "Answer: It still is a valid breach claim because it
12 would, to the extent there was a misstatement of income
13 that was material and adverse to the interest of
14 investors, that would provide a claim. There is no
15 variance in the rep or there is no variance in fact in
16 custom and practice."

17 Were you asked those questions and did you give those
18 answers at the deposition?

19 A Yes. And that's my personal view. However, it was
20 modified for purposes of making the opinion here; that, of
21 course, if I think any variance is a -- is material, then a
22 variance of five percent or greater would be material.

23 THE COURT: I'm sorry. I need to understand what's
24 going on here.

25 It's your view, Mr. Aronoff, that a income breach

1 of .05 percent is a material breach.

2 THE WITNESS: Theoretically it increases the risk
3 of loss.

4 THE COURT: That's -- but for the fact that somehow
5 there was a tolerance imposed you would have -- it would
6 have been your opinion, your recommendation to submit a loan
7 that contained a .05 percent misrepresentation of income as
8 a claim in this case?

9 THE WITNESS: No, Your Honor. There's always a
10 tolerance imposed. There's always a tolerance imposed for
11 this very reason; that -- to stay away from trivial actual
12 differences. But in point of fact --

13 THE COURT: How do we know what the tolerance is?

14 THE WITNESS: In any case where these types of
15 reviews are done, it's incumbent upon the expert who is
16 making the opinion to explain what the redlines that were
17 drawn were.

18 THE COURT: So -- and in none of my question -- I'm
19 merely trying to clarify. Are you saying that you imposed
20 the five percent tolerance in this case? You personally?

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 THE WITNESS: At --

24 THE COURT: Go ahead.

25 THE WITNESS: -- Duff.

1 THE COURT: Okay. Thank you.

2 BY MR. DAVIS:

3 Q And that tolerance that you imposed on this case had
4 nothing to do with the underwriting guidelines for the loans
5 that were at issue, right?

6 A No. The underwriting guidelines are irrelevant to a
7 consideration of misrepresentation of income.

8 Q So neither Duff & Phelps nor the loan review firms
9 looked to the applicable underwriting guidelines to
10 determine whether a given misrepresentation of income was
11 material to the credit decision, right?

12 A That's correct.

13 Q So except for breaches of the underwriting guideline
14 representation the underwriting guidelines were not
15 consulted to determine whether a breach was material under
16 the terms of the no default or no untrue statement
17 representations, right?

18 A That's correct and that's consistent with industry
19 custom and practice.

20 Q Now if we look again at page 34 where you set out the -
21 - what you call the no untrue statement representation, the
22 last sentence there says to the best of seller's knowledge
23 no fraud was committed in connection with the origination of
24 the mortgage loan. Do you see that?

25 A I do.

1 Q And in your view the trustees did not have to prove
2 seller knowledge to demonstrate that a misstatement or
3 omission reached what you call the no untrue statement
4 representation, right?

5 A Yes.

6 Q So there was no seller knowledge qualified mapped into
7 the misrepresentation of breach findings for purposes of the
8 trustees loan review, right?

9 A Unless to the extent that someone wanted to argue that
10 the fourth sentence was violated and then knowledge would be
11 required.

12 Q Was it or was it not mapped into the trustees'
13 misrepresentation of breach findings, sir?

14 A To the extent there was a finding of fraud it would
15 have breached the fourth sentence and that would have had to
16 have been shown.

17 Q I'm not asking you in theory to the extent. I'm asking
18 you in actuality was it mapped?

19 A I don't understand your question.

20 Q Okay. Did you have a protocol by which for any
21 misrepresentation claim the loan review firms were
22 instructed to identify seller knowledge?

23 A Same answer. If the reason for the breach was fraud,
24 mortgage fraud, then knowledge would have been required.

25 Q But did you bring any claims based on mortgage fraud

1 such that knowledge would be required?

2 A I don't believe so. I don't know offhand.

3 Q Okay. So now let's talk about AMA. The opinion you
4 gave in your reports in this case was that the AMA standard
5 is met when the related breach finding identifies that the
6 deviation of the actual loan characteristics from the
7 characteristics that the loan was represented to have
8 significantly increases the risk of loss on the loan; is
9 that right?

10 A Yes.

11 Q Okay. But when you articulated the standard here in
12 court the other day you left out the term significantly. So
13 have you changed your opinion?

14 A No, I haven't changed my opinion.

15 Q Okay. So there must be a significant increase in the
16 risk of loss in your view, right?

17 A Yes. That's why the tolerances were imposed to meet
18 that standard.

19 Q So the tolerances were imposed both to meet the term
20 material in the underlying reps and AMA simultaneously?

21 A I don't think that's what I'm saying. And maybe I
22 don't understand your question.

23 Q Well, when I was asking you questions about materiality
24 before we were talking about the term materially or material
25 in the representations themselves. We were not talking

1 about AMA.

2 A I understand that.

3 Q And you raised the point about tolerances in that
4 context.

5 MR. SHUSTER: Objection. I'm not sure that's
6 accurate that Mr. Aronoff raised that .

7 THE COURT: I think Mr. Davis is recalling the
8 testimony correctly. So let's keep going and try to get
9 this clear.

10 Go ahead, Mr. Davis.

11 BY MR. DAVIS:

12 Q The term risk of loss doesn't appear in the MLSA-A's,
13 right?

14 A At least I know it doesn't -- I don't know. I know it
15 doesn't appear in the repurchase provisions. I don't know
16 if it appears elsewhere in the documents.

17 Q And the risk of loss you're referring to here is the
18 risk of loss to the certificate holders; is that right?

19 A In terms -- with respect to AMA, yes.

20 Q Yes. We're on AMA now.

21 And in your opinion the risk in the term risk of loss
22 need never come to pass, correct?

23 A Yes. That's correct. It's expected risk of loss.

24 Q Now every loan involves some risk of loss, right?

25 A Yes.

1 Q And any securitized loan involves some risk of loss to
2 the secure -- the certificate holders, right?

3 A Yes.

4 Q And therefore every securitized loan has embedded in it
5 a baseline risk of loss, right?

6 A If I follow your logic that's correct.

7 Q Now in your view the term significantly, right, means a
8 meaningful increase, a substantial increase, an increase
9 that isn't trivial or technical. I think that's how you
10 described it to me, right?

11 A Sounds like something I would say. Yes.

12 Q But your opinion is that there is no requirement in the
13 repurchase provisions that AMA be quantified and you did not
14 do so, correct?

15 A That's correct.

16 Q Okay. Let's put up TRDX-174 which is your slide. If
17 you need to look at it it's in your binder, the small
18 binder, but I think it suffices on the screen.

19 This is a slide you discussed last week, right?

20 A Yes.

21 Q And you used it last week to explain your definition of
22 AMA, right?

23 A Yes.

24 Q This formula, though, appears nowhere in your expert
25 reports, correct?

1 A It does in words. It may not in this form, but it is
2 certainly explained in my expert reports.

3 Q This calculation that you have here with the
4 multiplication sign and the equal, that doesn't appear in
5 your expert reports, does it?

6 A Again, it does textually. It doesn't appear in this
7 form.

8 Q Okay. You didn't apply this calculation that you have
9 up here on a quantitative basis to a single loan in the
10 case, right?

11 A I applied this formulation to every single breach
12 finding in the case.

13 Q Did you put numbers with respect to any loan into this
14 formula?

15 A No.

16 Q Okay. Now let's talk about when risk of loss is
17 measured under your view of AMA. In your opinion because
18 there are no certificate holders until the RMBS is created,
19 risk of loss should not be measured as of the date of
20 origination, right?

21 A Are you talking about origination of the loan?

22 Q Yes.

23 A Well, I don't know if that's the reason, but, no. AMA
24 with respect to certificate holders is measured as of the
25 issue date of the securitization.

1 Q So in your view it can't be measured, risk of loss
2 can't be measured at the time the loan is originated because
3 the bond hasn't come into existence yet, right?

4 A It can be assessed, but it has no meaning in terms of
5 certificate holders because there aren't any certificate
6 holders.

7 Q So in your view AMA is measured on the date of
8 securitization for purposes of the lead purchase claim,
9 right?

10 A With respect to certificate holders, yes.

11 Q And while you cite Judge Castel's opinion in the
12 (indiscernible) case in your expert reports on this issue,
13 on the issue of when to measure AMA you expressly disagree
14 with him, right?

15 A Not expressly. I note the conundrum where he initially
16 discusses that the reference date for AMA with respect to
17 certificate holders is the date the breach is identified,
18 but then goes on to say, in essence, there's -- there's no
19 difference between that day and the issue date because the
20 damage is done when the loan is deposited in the trust with
21 the promises broken and the investor provides consideration
22 for the loan on that date.

23 Q You say in your report that Judge Castel's view of when
24 to measure AMA is not consistent with industry
25 understanding, correct?

1 A With respect to the reference date, but then in the
2 footnote I talk about how I believe he gets to the same
3 place.

4 Q Okay. Let's take a look at -- actually, I think we're
5 already on page 34 -- page 40, to note 56. And you say:

6 "I understand that in a recent case Judge Castel
7 suggested -- in a recent case that Judge Castel
8 suggested that materiality should be assessed at the
9 time a demand to repurchase is made. That is not my
10 understanding and in my view not consistent with industry
11 understanding."

12 You go on to say you think it's not a meaningful
13 distinction. But, in fact, you do say it's not your view
14 and not consistent with industry practice, right?

15 A I think if you read the entire footnote, particularly
16 the last sentence, it comports with exactly how I just
17 explained the position that you're asking me about.

18 Q Now when the trustees presented their claims in the
19 protocol they didn't provide any separate analysis of AMA
20 related facts as of the time of securitization, right?

21 A The -- all of the assessments were made as of the time
22 of securitization.

23 Q Did the trustees analyze the state of affairs at the
24 time of securitization in their breach narratives?

25 A I'm sorry. I don't understand the question.

1 Q Well, let me give you an example. For a
2 misrepresentation of debt claim did the -- the trustees
3 didn't confirm and document that the debt was still
4 outstanding at the time of securitization, right?

5 A No, but that -- the analysis has to do with what the
6 reps say and what the promises say. And the reps talk about
7 misrepresentations of debt in connection with the
8 application process, the origination process. So for
9 purposes of identifying whether or not there was a
10 misrepresentation, the factual threshold that supports that,
11 you look at the origination date of the loan.

12 To the extent that misrepresentation was made when the
13 loan was made and it continues when the loan is deposited in
14 the trust, at that point in time when the certificate
15 holders buy a security -- a certificate supported by loans
16 that do not meet the promises made by the sponsor, that's
17 the point at which you determine whether or not the non-
18 conforming loan as you now know it to be has increased the
19 risk of loss or the value of the loan to the certificate
20 holder as of the time they purchased the certificates.

21 Q So if the trustees brought a misrepresentation of debt
22 claim that was omitted from the loan application, but which
23 debt was resolved prior to securitization of the loan it
24 wouldn't affect your analysis at all?

25 A That's correct.

1 Q And by the way the trustees, when they were presenting
2 their claims in the protocol, they didn't provide any
3 separate analysis of AMA related facts as of the time the
4 claim was made either, right?

5 A No, they didn't.

6 Q Now when the trustees brought misrepresentation claims
7 they did not distinguish between intentional and
8 unintentional misrepresentations in their submissions to the
9 protocol for purposes of determining AMA, right?

10 A Not based on the standard rep and warranty. There
11 might have been some reps that didn't contain the third
12 sentence of the no untrue statement rep we're talking about.
13 It only contained the first two and the seller's knowledge
14 piece. And in those cases to the extent we found a defect
15 of the type we're talking about here there wouldn't have
16 been a claim based on that.

17 Q Were there any such non-standard representations and
18 warranties?

19 A I -- maybe a handful.

20 Q So you're sure or you're not sure?

21 A Can I hear the question again?

22 Q Were there any such non-standard representations and
23 warranties of the sort that you described a few moments ago?

24 A I'm not sure.

25 Q And there was no attempt to document the determination

1 that a misstatement was intentional because in your view the
2 breach existed whether or not the misstatement was
3 intentional based on the language of the standard
4 representations, right?

5 A That's correct.

6 Q And you do not agree that the facts of the 70,000 or so
7 misrepresentation claims from the subject loans supported
8 the inference that the vast majority of those alleged
9 misrepresentations were intentional, correct?

10 A No. That's not correct.

11 Q Okay.

12 A I think that whether or not we had to reach a finding
13 as to whether or not the misstatement was intentional. In
14 many instances just based on the type of statement and the
15 egregious nature of the statement one could reasonably
16 conclude that it was an intentional misstatement.

17 MR. DAVIS: Your Honor, I would like to actually
18 play this clip from the deposition.

19 THE COURT: Okay.

20 MR. DAVIS: Page 303, line 7 to 14.

21 (Pause)

22 MR. DAVIS: No clip? Okay. I'll just read it.

23 "Question: So in your opinion that -- is it your
24 opinion that the facts of these 70,000
25 misrepresentation breach findings listed on table

1 one here support the inference that the vast
2 majority of those alleged misrepresentations were
3 intentional?

4 "Answer: No. We discussed this in my prior
5 deposition."

6 BY MR. DAVIS:

7 Q Did I ask you that question and did you give me that
8 answer?

9 A Yes. And that wasn't my opinion. That's not to say
10 that you could draw a reasonable inference looking at the
11 facts that they were intentional.

12 Q So any inference that you would draw is not your
13 opinion?

14 A No. I'm very clear as to what my opinions were. I
15 didn't have to reach that conclusion to offer the opinion as
16 to whether or not there's a breach of rep and warranty here.

17 Q You didn't have to and you didn't, in fact, reach that
18 conclusion, correct?

19 A That's correct.

20 Q Now let's talk for a moment about the tolerances that
21 you mentioned before. You testified briefly about some
22 tolerances, one of which is the example we heard where the
23 trustees would not assert a misrepresentation of income
24 claim unless the difference between what you determined to
25 be the represented income and what you determined to be the

1 actual income was greater than five percent, right?

2 A Yes.

3 Q And in your opinion every misstatement of income that
4 passed the five percent threshold that you set up would
5 adversely and materially affect the value of the loan based
6 on the representations and warranties in this case, correct?

7 A That was the conclusion that was drawn. That wasn't
8 the reason.

9 Q Is it your opinion that every misstatement of income
10 that passed the five percent threshold that you set up would
11 adversely and materially affect the value of the loan based
12 on the representations and warranties in this case?

13 A In this case every misrepresentation of income that was
14 included in my report met the AMA test.

15 THE COURT: By definition or --

16 THE WITNESS: No.

17 THE COURT: -- based on a separate analysis of each
18 and every one?

19 THE WITNESS: The latter. That's a distinction I'm
20 trying to make and not very well, I guess.

21 THE COURT: Thank you.

22 THE WITNESS: The determination was made on a loan
23 by loan basis, not by definition.

24 BY MR. DAVIS:

25 Q And that would be true regardless of what happened to

1 the borrower's income after origination, correct?

2 A Yes.

3 Q And it's true regardless of whether that misstatement
4 was the cause of any loss on the loan, right?

5 A That's correct.

6 Q And it's true regardless of whether the loan is still
7 performing, right?

8 A Yes.

9 Q Now there wasn't any strict variance set up for
10 misrepresentation of debt claims, right?

11 A There was a -- there was no set standard, but as I said
12 before there was a direction that they shouldn't include
13 trivial differences and that was reinforced at the QC-2
14 level where QC-2 had the ability if they thought the
15 difference in debt was not significant to kick that claim.

16 Q How many claims at the QC-2 level were rejected based
17 on the tolerance, do you know?

18 A No, I don't.

19 Q And I think you told me that that determination was
20 subjective to the underwriter, but de minimis or small
21 misrepresentation of debt claims should not have been
22 brought, right?

23 A That was the guidance. Yes.

24 Q And there was not a hard and fast tolerance for
25 misrepresentation of assets, but the threshold was left to

1 the discretion of the loan reviewers as confirmed by Duff &
2 Phelps, right?

3 A That's correct.

4 Q And you don't know whether these tolerances we've been
5 discussing were written down anywhere before you drafted
6 your report in this proceeding, right?

7 A That's correct.

8 Q Okay. Now we also talked about a gloss on these
9 tolerances. Do you remember I was talking about that?

10 A I don't.

11 Q Okay. You said the gloss was that in the event there
12 was more than one potential misrepresentation breach finding
13 and the evidence was deemed sufficient to support one of
14 them, all of the other potential breach claims on that loan
15 would be made regardless of whether those other claims would
16 have been made on a stand-alone basis. Do you remember
17 discussing that?

18 A Yes, I do now.

19 Q Okay. And did I articulate it correctly?

20 A It was very close. Yes.

21 Q Okay. And you told me that the basis for that gloss
22 comes right out of some legal opinions, right?

23 A I don't know if I said it comes out of legal opinions.
24 I probably referred to legal opinions where that notion had
25 been articulated and accepted. But it's fairly standard in

1 the industry and I think in -- I don't recall which opinion,
2 there was a discussion of the totality of misrepresentation
3 breaches may, in fact, result in a breach even if any one of
4 them standing alone would not be deemed significant.

5 Q So given this guidance that you took out of the case
6 law the trustees assert a misrepresentation breach claims in
7 the protocol that standing alone would not have been
8 brought, correct?

9 A My -- I'm only quibbling with your reference to
10 guidance that we took out of the case law. This is -- this
11 is based on my experience and accepted practice in terms of
12 analyzing whether there's a loan that just, you know, dies a
13 death of a thousand cuts even if not one cut would be
14 sufficient on a stand-alone basis.

15 And I -- again, I think my reference to it was that
16 that notion was picked up in one of the three opinions we
17 have where we get some guidance from courts as to what they
18 accepted as industry custom and practice in guiding them in
19 their decisions.

20 Q Okay. So you were basing this on the guidance that
21 comes out of the case law then?

22 A Again, no, I wasn't.

23 Q Okay.

24 MR. DAVIS: Your Honor, I would like to read the
25 deposition from the transcript again, pages 418, lines 2 and

1 419, line 19.

2 THE WITNESS: I'm sorry. Where are we?

3 MR. DAVIS: We're in the deposition transcript.

4 I'm going to read it in a moment.

5 "Question: Okay. Let's take a look at Row 13.

6 It's count ten. Here it says the represented

7 employment was three years on the job and the

8 actual employment was 2.7 years on the job. Is it your

9 opinion that that difference is material?

10 "Answer: When I said generally there was also a --

11 there was also guidance that to the extent you

12 found other information in the file regarding a

13 particular breach finding in loans where there were

14 other misrepresentation breach findings, to cite

15 every misrepresentation whether or not on a stand-

16 alone basis it would have resulted in a claim for that

17 loan. And that's the guidance that was provided

18 right out of the few cases we see where the judges

19 talk about that very specific circumstance where

20 you may have a collection of misrepresentation breach

21 findings on any given loan that individually none

22 would rise to the level of an acceptable or actual

23 breach finding.

24 "But the fact that you have a collected number of

25 misrepresentations by the same borrower in the same

1 loan may provide sufficient grounds for a finding
2 that this loan is defective and should be
3 repurchased. So the instruction was -- and that may
4 be the case here. Again, I'm not saying it is. I
5 would have to look at the specifics of that -- of
6 that loan file. But I think the fact that it is
7 linked with two other breach findings is the reason
8 that this discrepancy between what the borrower said
9 and what was found to be the actual case is cited as
10 corroborating evidence of the fact there was a
11 problem with this loan and probably strengthens the
12 misrepresentation of income and excessive DTI breach
13 findings."

14 BY MR. DAVIS:

15 Q And did I ask that question and did you give that
16 answer in your deposition?

17 A Yes.

18 Q Mr. Aronoff, up until the time you left Duff & Phelps
19 you made the final decision on whether a particular breach
20 finding materially and adversely affected the value of the
21 loan, correct?

22 A QC-2 did on each individual breach finding. It was my
23 guidance and policy that they were using, but I didn't make
24 the final determination with respect to every single loan.

25 MR. DAVIS: Your Honor, I would like to read the

1 deposition, page 85, line 23 to 86, line 2.

2 "Question: Who made the final decision on whether
3 a particular breach finding materially and adversely
4 affected the value of the loan?

5 "Answer: I did up until the time I left."

6 BY MR. DAVIS:

7 Q Did I ask that question and did you give me that answer
8 in your deposition?

9 A Yes.

10 Q Now after you left Duff & Phelps it was your
11 understanding that there had been a sufficiently large
12 number of every type of breach finding that those who
13 followed you could use the findings you had already
14 developed to map the breach types to the correct materiality
15 determination, right?

16 A Yes.

17 Q Now we tried to -- let's put up PA Exhibit 811, which
18 is I think Tab 5 in the small binder. And I think I showed
19 you a variant of this or maybe this very thing in your
20 deposition. But we went through your Exhibit 15 which is
21 quite large and as far as we can tell these are the only
22 formulations of the statements for materiality, supporting
23 materiality in your Exhibit 15. Does that look right to
24 you?

25 A Yes.

1 Q And that's because these are, in your opinion, all the
2 possible ways a breach finding could be material and adverse
3 with respect to the loans that you examined, right?

4 A Yes.

5 Q To determine whether the risk of loss increases in your
6 opinion there are only two levers that can be adjusted,
7 whether the breach affected the likelihood of default,
8 potential loss severity or both, right?

9 A Correct.

10 Q So to the extent you have the same sets of
11 representations and warranties that apply to a pool of
12 loans, all you need to know is that there was a breach and
13 then you can make a determination based on the type of the
14 breach, whether it affected the likelihood of default, loss
15 severity or both, right?

16 A I'm sorry. Can I hear the beginning of the question
17 again?

18 Q Sure. I'll give it to you again completely.

19 So to the extent that you have the same sets of
20 representations and warranties that apply to a pool of loans
21 all you need to know is that there was a breach and then you
22 can make a determination based on the type of the breach,
23 whether it affected the likelihood of default, loss severity
24 or both?

25 A I don't think that's quite right. It may be, but I'm

1 not sure what you mean when you're using certain of those
2 words.

3 Q And which words are confusing you?

4 A Breach.

5 Q And what's confusing about breach?

6 A Oh, I -- I try and be careful to use breach finding as
7 the term that means there is a particular type of finding.
8 And a breach finding would by definition be a material
9 adverse breach of a rep and warranty. And so the answer to
10 your question using breach finding as I've used it in my
11 reports is, yes.

12 But the first has to be that materiality determination
13 with respect to the underlying breach finding to -- in
14 essence you have to -- breach finding already assumes it
15 meets AMA on a loan by loan basis. You can have a breach, a
16 potential breach that is analyzed and the determination on
17 that loan is determined that it is material and then that
18 breach finding will always map into one or more of the reps
19 and warranties in that transaction.

20 Q Let me try asking it with a slight twist and maybe it
21 will help.

22 So to the extent that you have the same sets of
23 representations and warranties that apply to a pool of
24 loans, all you need to know is that there was a breach of
25 the representations and warranties and then you can make a

1 determination based on the type of breach, whether it
2 affected the likelihood of default, loss severity or both?
3 Did that help?

4 A No. I mean, I under -- I think I understood what you
5 said and that's not correct.

6 Q And why is it not correct?

7 A Because the materiality is determined based on the
8 specific breach finding as it relates to a specific loan.
9 And then if you determine you have a material breach finding
10 you're finished. I mean, the reps and warranties, the --
11 whether or not, whether or not there is a breach finding as
12 I've used the term with respect to a particular rep and
13 warranty already includes a finding of materiality.

14 So all of the misrepresentation of income breach
15 findings that were the subject of my report are material and
16 adverse not because they're called misrep of income, but
17 because if they weren't found to be material on a loan by
18 loan basis, meet AMA on a loan by loan basis they wouldn't
19 have been included as misrepresentation of income breach
20 findings in the report. They would -- never would have
21 showed up.

22 Q You told me you were able to, based on the type of
23 breach, map the materiality basis to the breach.

24 A Type of breach finding.

25 Q You're able then to map the type of breach to the

1 materiality basis asserted, correct?

2 A Yes.

3 Q And you did that mapping in this case, correct?

4 A Now you're confusing me with the word mapping. What
5 are we mapping to what? I mapped breach findings to reps
6 and warranties. Is that what

7 Q You were matching --

8 A -- you're talking about?

9 Q You were matching --

10 THE COURT: Okay. Hold on. We're not going to
11 argue with each other. There's a question and an answer.
12 Okay. This is about as clear as mud right now and by my
13 count there have been any number of inconsistent responses
14 given to the questions which I'm willing to chalk up to the
15 fact that we're not communicating well.

16 So let's everybody settle down. Mr. Davis, look
17 back at all the questions and answers that you have and keep
18 at it. But right now there is no clarity. I can ask a
19 question, but I'm not gonna. So, Mr. Davis, you can keep
20 trying.

21 MR. DAVIS: Okay.

22 BY MR. DAVIS:

23 Q To the extent you have the same sets of reps and
24 warranties that apply to a pool of loans and to the extent
25 you identify similar characteristics across the pool that

1 are defective and breach that rep, they will be material for
2 the same reasons. They will breach the rep and it will be
3 material for the same reasons, correct?

4 (Pause)

5 A They may be material for the same reasons.

6 Q Let me try the deposition testimony at page 230, lines
7 2 to 16.

8 "Question: So all you need to know is that there was a
9 breach and then you can make a determination based on
10 the type of breach, whether it affected the likelihood of
11 default, the loss of severity or both?"

12 "Answer: To the extent you have the same sets of reps
13 and warranties that apply to a pool of loans, and to
14 the extent you identify similar characteristics across the
15 pool that are defective and breach that rep, they will
16 be material for the same reasons. They will breach the
17 rep and it will be material for the same reasons."

18 Did I ask that question and did you give me that
19 answer?

20 A Yes.

21 Q And in the materiality bases, which we saw up on that
22 slide before --

23 THE COURT: When you are at a stopping point let's
24 take a break. All right.

25 MR. DAVIS: Okay. We're -- I'm happy to -- I'm

1 happy to stop.

2 THE COURT: Okay. All right. We're going to take
3 a break. We'll come back in ten minutes.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: All right. Okay. Thank you.

6 (Recessed at 2:58 p.m.; reconvened at 3:15 p.m.)

7 THE COURT: Okay.

8 BY MR. DAVIS:

9 Q Mr. Aronoff, let me take you back to Exhibit 15 of your
10 report which is at Tab 15 of your binder.

11 (Pause)

12 A Okay.

13 Q Okay. Do you see the column that's headed, G
14 Materiality Basis for Defect?

15 A Yes.

16 Q What information is supposed to be in that column?

17 A It was supposed to be the materiality statement that
18 was required pursuant to the protocol --

19 Q Okay. So that --

20 A -- which each claim that was submitted.

21 Q Okay. So that -- that column reflects the materiality
22 bases for the defects that the trustees provided to the plan
23 administrator when they submitted their claims, right?

24 A Yes.

25 Q Okay. And the only information in these statements is

1 an identification of the type of breach and then a statement
2 of the sort that we saw on the demonstrative a few moments
3 ago, how that particular breach type affects credit risk,
4 right?

5 A Yes.

6 Q Okay. And that's true for all these hundred plus
7 thousand breach claims that the trustees submitted, right?

8 A Yes.

9 Q Okay. So just to summarize your opinion, the AMA
10 standard of the governing agreements in this case is met
11 when the related breach finding significantly increases the
12 loss on the loan at the time of securitization of the loan
13 whether or not such increased risk ever results in a loss,
14 right?

15 A I think that fairly paraphrases how I say it in the
16 reports.

17 Q But you do agree that the single most important factor
18 to an RMBS investor is the certainty of the cash flow
19 produced by the related underlying mortgage pool, right?

20 A The potential certainty of cash flow. The cash flow
21 that they're going to receive, not the cash flow they
22 actually receive.

23 THE COURT: It's not the potential certainty, it's
24 the certainty of the potential cash flow.

25 THE WITNESS: Correct.

1 THE COURT: The certainty of the expected cash
2 flow. Better?

3 THE WITNESS: Yes. Yes, better.

4 (Pause)

5 BY MR. DAVIS:

6 Q I would like to read from the deposition transcript on
7 page 40 at line 18 through page 41, line 7. And here we're
8 reading from a prior affidavit.

9 "Question: Okay. And please take a look -- Question:
10 Okay. Please take a look at paragraph 40. The middle
11 sentence there says, 'In my experience the single most
12 important factor to an RMBS investor is the certainty
13 of the cash flow produced by the related underlying
14 mortgage

pool.' Do you see that?

15 "Answer: I do.

16 "And was that your opinion in August of 2014?

17 "Answer: Yes.

18 "Is it still opinion -- your opinion today?

19 "Answer: It is."

20 Did I ask you those questions and did you give me those
21 answers?

22 A Yes.

23 Q So I'm going to pose a hypothetical. Suppose that a
24 loan performed for five years despite an income
25 misrepresentation that shows that the borrower made six

1 percent less than what was reflected on his loan
2 application. After five years the borrower gets hit by a
3 bus and dies. The loan defaults and the breach claim is
4 asserted.

5 In your opinion those facts and circumstances would
6 lead you to conclude that the income misrepresentation
7 materially and adversely affected the value of the loan,
8 correct?

9 A Based on your hypothetical I would say there is a
10 material adverse breach, but it's not based on the facts you
11 just read. Some of those facts are irrelevant in my
12 consideration.

13 Q Given the facts I just read you would still say it
14 materially and adversely affects the value of the loan,
15 correct?

16 A That's correct.

17 Q Okay. And to be clear it's your opinion that this
18 misrepresentation materially and adversely affects the value
19 of the loan even though the loan defaulted for a reason
20 other than the breach, right?

21 A Yes.

22 Q And that's because in your view it is not relevant that
23 the risk associated with the breach ever come to pass and,
24 in fact, that the loan defaulted for another reason, right?

25 A Can I hear that question again, please?

1 Q And this is because in your view it is not relevant
2 that the risk associated with the breach ever came to pass
3 and, in fact, that the loan defaulted for another reason,
4 correct?

5 A I'm not sure how to answer that because that's not the
6 reason that I think there's a breach, but the fact that the
7 -- the fact that there was an increased risk of loss based
8 on the misrepresentation and the borrower never got the
9 benefit of their bargain for assuming that the loan
10 conformed with the reps and warranties, given your fact
11 pattern would result in a material adverse breach to the
12 borrower -- to the investor, I'm sorry. I'm (indiscernible)
13 Aronoff with bar investors. Sorry about that.

14 Q Okay. But notwithstanding the fact that the loan
15 defaulted for another reason, right?

16 A Yes. The reason why the loan ever defaulted at all, if
17 it did, is irrelevant to my AMA analysis.

18 Q And if this claim under the circumstances we were just
19 talking about passed through the loan review process during
20 the protocol and reached your desk you would have decided
21 that this claim satisfied AMA, right?

22 A That's what I don't know based on just the six percent
23 breach. I would -- I would -- if there was a valid breach
24 finding of misrep of income, yes.

25 Q So I'm going to pose another hypothetical. Suppose

1 that a loan file indicated that the borrower had
2 misrepresented his debt by \$10,000 but the file also
3 indicated that the borrower had \$5 million in liquid assets.
4 Your view is that the risk of loss would materially increase
5 as a result of the misrepresentation of the \$10,000 debt,
6 correct?

7 A Yes. That would be a valid breach finding.

8 Q And that's true even though the likelihood of default
9 may be very small to start with given the \$5 million in
10 liquid assets, right?

11 A That would be true because whatever the risk of loss
12 was at origination based on the breach of the rep and
13 warranty, the loan is worse in terms of credit risk than it
14 was at origination. So, yes.

15 Q Let me walk through one more hypothetical and they're
16 going to put it up on the screen so you can follow.

17 So let's assume -- and this, by the way, is drawn from
18 a loan in the case. Let's assume that the borrowers are a
19 middle age husband and wife. They purchase a home as an
20 investment property for \$139,000. Let's assume their FICO
21 score is 738. Their DTI is 39.5 percent. The minimum FICO
22 on this process was -- on this product was 620 and the max
23 DTI was 50 percent.

24 Now let's assume that the borrowers misstated their
25 debt on the loan application and the additional debt would

1 raise their DTI to 74 percent. Nonetheless, the borrowers
2 pay on that loan for over eight years. After eight years of
3 payment the servicing company receives a letter from the
4 wife stating that her husband had passed away and she could
5 no longer make ends meet.

6 Let's assume that the last payment the couple made on
7 the subject loan was the month before the husband's passing.
8 In your view, the misstatement of debt on this loan would
9 satisfy the AMA requirement, right?

10 A Yes.

11 Q And in your view this would be a valid breach claim,
12 correct?

13 A Yes.

14 THE COURT: Would your answer be the same, Mr.
15 Aronoff, if in this hypothetical, assuming that this is,
16 I'll make it up, what I'll call a conventional 15 year
17 mortgage, 15 years instead of 30 years, and the loans were
18 made for 14 years and six months when the husband passed
19 away, your answer would stay the same, right?

20 THE WITNESS: Yes.

21 THE COURT: Thank you.

22 BY MR. DAVIS:

23 Q Now in your deposition I asked you whether there was a
24 significant risk of a windfall to the trustees if the breach
25 that's claimed has nothing to do with the loss that occurs

1 in connection with the loan. Do you remember me asking you
2 that?

3 A Vaguely.

4 Q Do you remember responding that you didn't know and
5 that you didn't investigate whether their rights under the
6 agreement would result in a windfall?

7 A I don't recall that answer.

8 Q Okay.

9 MR. DAVIS: So, Your Honor, let me read deposition
10 transcript page 231, 23 to 232, 20.

11 "Question: In the context of this case in this
12 estimation proceeding isn't there a significant
13 risk of a windfall to the trustees if the breach that's
14 claimed has nothing to do with the loss that occurs
15 in connection with the loan?

16 "Answer: I don't know. And I haven't considered
17 if that's a reason to change the documents. All I can
18 -- all I opined on is what the documents said, and
19 to the extent the certificate holders are not
20 getting the benefit of their bargain or not is the
21 extent to which my analysis went. I didn't -- I
22 didn't investigate what the -- whether or not
23 enforcing their rights under the agreement would
24 result in a windfall to the party that does that or
25 not. But typically that's not a reason to change

1 the terms of the document. I guess Bankruptcy Court
2 might be the exception. I just don't know."

3 BY MR. DAVIS:

4 Q Did I ask you that question and did you give me that
5 answer?

6 A You asked me that question, but it was a little
7 different
8 than the question you asked me prior to showing the
9 testimony.

10 Q Okay. Did you do any investigation to determine
11 whether or not enforcing the rights -- their rights
12 (indiscernible) rights under this agreement would result in
13 a windfall to them or not since I took your deposition?

14 A I haven't done any investigation as to that matter.
15 No.

16 Q In fact, Mr. Aronoff, you don't have an understanding
17 as to what a proof of claim in the bankruptcy context is,
18 correct?

19 A No.

20 Q And you have not seen the proofs of claim filed in this
21 case by the trustees, right?

22 A I don't believe I have.

23 Q And to be clear you did not have an opinion whether the
24 breach claims that you reviewed and analyzed should give
25 rise to a remedy for the trustees in this Bankruptcy Court

1 estimation proceeding, correct?

2 A Only to the extent that my opinions as to how the
3 repurchase price would be paid under the normal repurchase
4 remedies that are found in the governing documents would
5 translate into those things. But, no, I don't know how that
6 repurchase price would play through the rules of this
7 estimation hearing.

8 Q And one of the reasons you don't have an opinion on the
9 appropriate remedies in this case is that you understand
10 this bankruptcy case is not a straight up put back case to
11 use your words, correct?

12 A In terms of my understanding that there is a
13 significant likelihood that the trustees on behalf of
14 certificate holders won't get the full repurchase price to
15 which they're entitled under the documents, that's correct.

16 Q You haven't been asked to provide any insight as to the
17 appropriate remedy, the amount of that remedy or anything
18 else of that kind, correct?

19 A That's correct.

20 Q And you have no idea how the governing documents at
21 issue in this case play out in the Bankruptcy Court,
22 correct?

23 A I wouldn't be so bold as to offer a view as to how that
24 would -- as to what would happen. No.

25 Q And you don't know anything about an appropriate remedy

1 in the context of this bankruptcy proceeding, right?

2 MR. SHUSTER: Objection. Asked and answered.

3 THE COURT: I'll allow it. Go ahead, Mr. Aronoff.

4 THE WITNESS: No, I --

5 THE COURT: -- if you recall.

6 THE WITNESS: -- don't.

7 THE COURT: Okay.

8 MR. DAVIS: May I have a moment, Your Honor?

9 THE COURT: Sure.

10 (Pause)

11 MR. DAVIS: Your Honor, I'm done. So I'm done with
12 my questions, Your Honor. Mr. Rollin had some questions
13 about some loans.

14 THE COURT: Thank you.

15 MR. ROLLIN: Are you ready to proceed now, Mr.
16 Rollin?

17 MR. ROLLIN: I'm just going to pass out some
18 binders --

19 THE COURT: Okay.

20 MR. ROLLIN: -- and, Your Honor, what we wanted to
21 do was make sure that (indiscernible) non-public information
22 is displayed so if we could just disconnect to the viewing -
23 -

24 THE COURT: Sure.

25 MR. ROLLIN: -- (indiscernible).

1 THE COURT: Whoever does that, ask them to do it,
2 please.

3 (Pause)

4 THE COURT: While we're getting set up, Mr. Shuster
5 and Mr. Rollin, could you come up for a second, please?

6 (Sidebar off the record)

7 THE COURT: Somebody needs to -- okay. Here come
8 our binders. Somebody needs to make sure that Mr. Aronoff
9 has what he needs.

10 Mr. Aronoff, just -- they're going to take --
11 they're going to get you set up. All right.

12 THE WITNESS: Yes.

13 (Pause)

14 THE WITNESS: I was given two new ones. I wonder
15 if I could get rid of any.

16 THE COURT: That -- the holistic approach to Mr.
17 Aronoff's witness box was that somebody should take away
18 from him what he doesn't need so he can be a little more
19 comfortable. There you go.

20 THE WITNESS: I don't know. Are they going to need
21 these anymore? Okay. Thank you. Thanks. Thank you.

22 THE COURT: Okay. All right. And now I can't tell
23 how anyone else feels about the temperature in the
24 courtroom. If you are warm, just take your jacket off.

25 THE WITNESS: Thank you.

1 THE COURT: Okay. It's a little warmer, right? Is
2 the heat on? Let's turn the heat off. Yes, because we have
3 the sun coming around now. At least we don't have a toxic
4 spill today.

5 THE WITNESS: I was going to say, the air quality
6 is superb today --

7 (Laughter)

8 THE WITNESS: -- relative to when we last met.

9 THE COURT: But we could -- we haven't had a fire
10 alarm yet in this trial. Usually I promise one fire alarm,
11 false alarm per trial.

12 MR. ROLLIN: Okay.

13 THE COURT: Okay.

14 MR. ROLLIN: Just to confirm, everybody has their
15 binders. You should --

16 THE COURT: We --

17 MR. ROLLIN: -- have two volumes --

18 THE COURT: Yes, we do.

19 MR. ROLLIN: -- just to review.

20 Mr. Aronoff, do you have two volumes?

21 THE WITNESS: Yes, I do.

22 MR. ROLLIN: Excellent. Thank you.

23 May I proceed?

24 THE COURT: Yes.

25 MR. ROLLIN: Very well.

1 CROSS-EXAMINATION

2 BY MR. ROLLIN:

3 Q Mr. Aronoff, will you please turn to plan exhibit --
4 plan administrator Exhibit 825 in the first volume?

5 (Pause)

6 Q Are you there, sir?

7 A Yes.

8 Q Okay. And if you -- this is an excerpt, a single line
9 excerpt from the claims tracking spreadsheet, correct?

10 A I don't know.

11 Q Are you unfamiliar with this format for the claims
12 tracking spreadsheet?

13 A Yeah. I didn't prepare the claims tracking
14 spreadsheets. I've seen some excerpts, but --

15 Q I will represent to you that Mr. Esses confirmed that
16 this is the manner in which a single loan is displayed in
17 the PDFs of the claims tracking spreadsheet. Okay. And if
18 you'll turn to page -- and you'll see the loan number ends
19 in 2963, right?

20 A Yes.

21 Q And if you turn to the second page, the page 2 of 2,
22 you can see that the claim made here is a misrepresentation
23 of employment, right?

24 A Yes. I see that.

25 Q And that's the only claim made with respect to this

1 one, right?

2 A Okay. And you see that the factual basis is that the
3 borrower represented himself as being a senior project
4 manager, but the loan -- in the loan file in the origination
5 VOE it was found that he was an EDD, and then (employment
6 development department manager), correct?

7 A Yes.

8 Q And if you go down further to the second to the last
9 line in the factual statement there is an assertion that an
10 EDD manager is in human resources. Do you see that?

11 A Okay. I see it.

12 Q And as I said, do you note that the evidence type being
13 offered in support of this claim is the origination
14 verification of the employment?

15 A Okay. I see that.

16 Q And if you'll flip to plan administrator 826 you will
17 find there a single line excerpt from Exhibit 19 to your
18 expert report. Do you see that?

19 A Yes.

20 Q And you can see the loan number is the same last four,
21 2963, right?

22 A Okay. Yes.

23 Q And the represented employment is senior project
24 manager, right?

25 A Yes.

1 Q And the actual employment is EDD manager, right?

2 A I see that.

3 Q And the evidence type is the origination VOE, right?

4 A Yes.

5 Q And that's the basis for the claim?

6 A Yes.

7 Q And I'll ask you to turn please to plan administrator
8 827 and confirm for me, please, that you find there the
9 breach package provided by the trustees in support of this
10 claim?

11 A Yes.

12 Q Would you please turn to page 21 of your exhibit; that
13 is, 21 of 36 based on the pagination in the bottom middle,
14 the footer? Are you there?

15 A I am.

16 Q And this is the origination VOE, right?

17 A Yes. It appears to be.

18 Q And if you see in Section 3(e) there's a handwritten
19 note that says EDD manager, correct?

20 A Yes.

21 Q And that appears to have been handwritten by the loan
22 processor who signed the document at origination, correct?

23 A It looks like the same handwriting. Yes.

24 Q And next to it is a typewritten note that says
25 employment development department (human

1 resources/recruiter), correct?

2 A Yes. I see that.

3 Q And that's the same typewritten note we've seen
4 throughout your examination that was added by the trustees'
5 loan re-underwriters in the protocol, right?

6 A Well, they're usually bigger and boxed, but it could
7 be.

8 Q It's consistent with what you've seen in these files
9 that when the re-underwriters had some annotating to do they
10 would include this type of type on the original underlying
11 documents that they were looking at, correct?

12 A That's correct.

13 Q And, in fact, you can see if you turn just briefly to
14 plan administrator 828 it's the same VOE but without that
15 annotation, right?

16 A It looks like it. Yes.

17 Q So this is the one from the loan file and the one that
18 we just looked at in the claim package is from the claim
19 package, right?

20 A Okay.

21 Q Does that look right to you?

22 A It's in the claim package.

23 Q And that's the dispute, right? The question is, is the
24 borrower a senior project manager as reflected in the loan
25 application or is the borrower in human resources as

1 reflected in the notes indicated by the loan re-underwriters
2 hired by the trustees, right?

3 A That appears to be the case. Yes.

4 Q But there's nothing on the VOE that says that he the
5 manager has anything at all to do with human resources,
6 right?

7 A That's right.

8 Q This is just an inference that's made by the re-
9 underwriters?

10 A Probably not.

11 Q You think they did some research --

12 A I do.

13 Q -- to come up with this?

14 A I don't know that, but generally to the extent they
15 could find information based on some kind of other research
16 they would do that.

17 Q Can you please turn to the loan application in the
18 claim package, and specifically to page 16 of 36?

19 (Pause)

20 Q Are you there?

21 A I am.

22 Q Do you see the employment section in the left-hand
23 side, bottom quarter or so, bottom third of the page?

24 A Yes.

25 Q And the position title or type of business is senior

1 project manager/litigation, right?

2 A Yes. I see that.

3 Q And the reference to litigation is not included in the
4 breach finding section, the factual statement on the claims
5 tracking spreadsheet, right?

6 A Right.

7 Q And it's not reflected in your Exhibit 19, the excerpt
8 that I showed you, right?

9 A That's correct.

10 Q And, in fact, the name of the employer which I will not
11 say in public is in the box immediately above the title,
12 correct?

13 A Yes.

14 Q Are you familiar -- looking at the name of that company
15 are you familiar with it?

16 A No.

17 Q But the loan application is clear that that's where the
18 borrower worked and it has the borrower's prior employer
19 right below the title, right?

20 A It does.

21 Q And you recognize that name, don't you?

22 A Yes, I do.

23 Q That's a big law firm here in town, right?

24 A Well, they're in town.

25 Q And by the way, if you look at the VOE, the origination

1 VOE which is again claim package page 21, it has the name of
2 the employer right there at the top. Do you see that?

3 A Yes.

4 Q Would you please turn to plan administrator 837?

5 (Pause)

6 Q Are you there?

7 A I am.

8 Q And 837 is just a Google search of that employer,
9 right?

10 A It appears to be.

11 Q And if you flip from page 1 over to page 2 you can see
12 what this employer does, right?

13 A Okay.

14 Q And this employer is a litigation consulting firm,
15 correct?

16 A Apparently.

17 Q Have you ever heard the term electronic data discovery?

18 A No.

19 Q If you wanted to shorten electronic data discovery to
20 initials would you call it EDD?

21 A You could.

22 Q And the borrower said he was a senior project manager
23 litigation, right?

24 A On the application, yes.

25 Q And there's nothing that suggest anywhere in the

1 application or the VOE that this borrower is engaged in
2 human resources, right?

3 A We haven't seen anything that would indicate that.

4 Q Right. That was an assumption or an inference made by
5 the re-underwriter than then rolled into the trustees'
6 analysis and even your own Exhibit 16 in your expert report,
7 right?

8 A I don't know that to be true.

9 Q You don't know if it was an inference drawn by the re-
10 underwriter?

11 A I don't know if there's something in the loan file that
12 may support what they thought it was or if --

13 Q You actually --

14 A -- it's just a mistake.

15 Q I'm sorry for interrupting.

16 You actually have no idea what the re-underwriter did
17 to reach the conclusion that this person who identified
18 themselves as a senior project manager litigation was, in
19 fact, in human resources, do you?

20 A In this case, no, I don't.

21 Q And that's because it wasn't part of your process to
22 find out exactly what the re-underwriters were thinking when
23 they performed these analyses, right?

24 A No. That's not entirely true.

25 Q So you -- you do know what the underwriter was thinking

1 when they performed this analysis and came up with the wrong
2 occupation?

3 A That's not what I said. I don't know what they
4 thought.

5 Q You --

6 A I'm saying that in QC-1 to the extent there was not
7 sufficient information in the file to support the inference
8 or the conclusion that was drawn by the loan review firm it
9 should have been questioned.

10 Q So QC-1 didn't catch this, right?

11 A Not this one, no.

12 Q And QC-2 didn't catch this, right?

13 A I don't know. I don't know what's in the loan file.

14 Q QC-2 didn't see this and withdraw the claim, did they?

15 A I'm sorry

16 Q QC-2 didn't see this and say, we're not going to make
17 this claim because, in fact, this person is a senior project
18 manager litigation working for a litigation consulting firm
19 rather than an employee in human resources?

20 A QC-2 did not withdraw this claim.

21 Q So it made it through QC-1. It made it through QC-2.
22 And it made it onto your Exhibit 19, right?

23 A Yes.

24 Q Can you turn to plan administrator 829, please? Do you
25 see plan administrator 829?

1 A I do.

2 Q And this is a Google search for EDD, right?

3 A It looks like.

4 Q And the first hit is employment development department,
5 right?

6 A I see that.

7 Q So it could be that the amount of research that the re-
8 underwriters did was to Google EDD, see that it was
9 employment development department and then list that on the
10 VOE and ultimately in the claim, right?

11 A I don't know what was done.

12 Q But what we do know if they had just Googled instead of
13 EDD, the name of the employer and made a link between the
14 represented income as senior project manager litigation and
15 the type of work that that employer engaged in, there might
16 be no claim at all?

17 A I'm sorry. Can I hear that question again?

18 Q Sure. What we do know is that if the loan re-
19 underwriters hired by the trustees had just Googled the name
20 of the employer, seeing that the employer was a litigation
21 consulting firm and see that the represented employment was
22 senior project manager litigation they may have been able to
23 resolve this claim with a Google search?

24 A They may have, but I don't know if they just Googled
25 EDD to come up with that or not. I just don't know.

1 Q Well, we do know they didn't Google the employer,
2 right?

3 A No. I don't know that.

4 Q You think they Googled the employer, found that it was
5 a litigation consulting firm and still made this claim?

6 A No. I said I don't know.

7 Q Because you have no idea what they did.

8 A On this particular file without looking at the loan
9 file I don't know.

10 Q But you managed -- you were able to file and assert the
11 opinion that over 100,000 claims are valid without looking
12 at the loan files and yet when I ask you questions you need
13 to look at the loan file?

14 A In order to assess what was done with respect to this
15 loan it would help clarify my answer as to whether or not
16 this is a mistake or whether there was some reasonable basis
17 for the notation we saw by looking at the loan file.

18 Q That raises an important point. The loan reviewers had
19 copies of the loan file and Duff & Phelps had separate
20 copies of the loan file, right?

21 A I don't know. I don't know if that's the case or not.

22 Q Mr. Esses would know the answer to that question,
23 right?

24 A I don't know what you mean by separate, but he probably
25 would. I don't know.

1 Q The loan reviewers had a copy of the file and Duff &
2 Phelps had a copy of the file, correct?

3 A I don't know if it was the same digital version or not.

4 Q So you're not sure that this loan files that both were
5 looking at were the same?

6 A I can only assume they were both looking at the same
7 loan file.

8 Q But you're making an assumption. That's not something
9 that you know?

10 A That's correct.

11 Q And when the loan reviewers communicated their findings
12 to Duff & Phelps they didn't send their copy of the loan
13 file, right? They only sent the breach findings, whatever
14 data points were captured in the data base and the claim
15 package, right?

16 A I don't know.

17 Q You don't know the answer to that question?

18 A I don't.

19 Q Would Mr. Esses be in a better position to know the
20 answer to that question than you?

21 A I don't know.

22 Q But in any event whatever work the loan re-underwriters
23 did they put in the claim package, correct?

24 A The supporting documentation was supposed to be
25 included in the claim package. That's correct.

1 Q And the supporting documentation with respect to this
2 claim is the origination VOE?

3 A Along with some other documents. That's correct.

4 Q But there's nothing in the other documents, and please
5 feel free to look through the claim file, that demonstrates
6 any of the research that was done by the re-underwriting
7 firms to reach the conclusion that this borrower rather than
8 being a senior project manager litigation was, in fact,
9 employed in human resources?

10 A Okay.

11 Q Is that a yes?

12 A I don't know.

13 Q Look at your copies.

14 A And what's the question?

15 Q The question is there's nothing in the claim file that
16 demonstrates any of the research that was done by the re-
17 underwriting firms to reach the conclusion that this
18 borrower rather than being a senior project manager
19 litigation as represented was, in fact, employed in human
20 resources?

21 A Other than the notation made by the loan review firm,
22 that's correct.

23 Q But the underlying whatever research was done to inform
24 that notation, that's nowhere to be found in the claim file?

25 A I don't think it's in the 20, however many pages. I

1 didn't see it.

2 Q Will you please confirm the answer to that question?

3 A Sure.

4 (Pause)

5 A No, it's not in here.

6 Q You still willing to say this is a valid claim?

7 A Yes, until I see the loan file and see if there's any
8 basis for what the employment status of the borrower was.

9 But based on just the claim file it could be a mistake.

10 Q I'm prepared to show you the loan file. I'll show you
11 the loan file.

12 MR. ROLLIN: Your Honor, may I approach?

13 THE COURT: Yes.

14 MR. ROLLIN: Thank you.

15 (Sidebar off the record)

16 BY MR. ROLLIN:

17 Q Mr. Aronoff, I'm going to move on for the moment and we
18 may or may not come back to that loan file now or on
19 redirect. For the moment will you please turn to plan
20 administrator Exhibit 833?

21 (Pause)

22 Q Are you there?

23 A Yes.

24 Q And this is a claims tracking spreadsheet again?

25 A Yes.

1 Q And the loan number is 9621?

2 A Yes.

3 Q If you turn to the second page of the claims tracking
4 spreadsheet you'll see that the allegation is for
5 misrepresentation of income, correct?

6 A Yes.

7 Q And it is supported by a tax return from the year 2005,
8 correct?

9 A Yes.

10 Q And will you please turn to Exhibit PA-834 and confirm
11 that that's the claim package for this loan? Are you there?

12 A Yeah.

13 Q And is that -- is this, in fact, a claim package for
14 this loan?

15 A It's the same loan number.

16 Q Would you please turn to page 16 of the claim package
17 using the number at the footer 16 of 29.

18 A Yes.

19 Q And do you see the employment section?

20 A I do.

21 Q And this borrower is self-employed, right?

22 A Yes.

23 Q He's a self-employed realtor, right?

24 A Appears so.

25 Q He's a self-employed realtor in Folsom, California,

1 right?

2 A Yes.

3 Q He takes out this loan in December of 2004, right?

4 A Yes.

5 Q And he states a monthly income or provides on his loan
6 application a monthly income of \$12,000, right?

7 A Yes.

8 Q And you don't know what the borrower was thinking in
9 terms of what figure is supposed to go there, do you?

10 A I don't know what the borrower was thinking.

11 Q Because it wasn't part of the trustees' process to
12 figure out what the borrower was thinking, right?

13 A No, it was not.

14 Q And if you -- as we saw a moment ago in the claims
15 tracking spreadsheet the breach narrative refers to the
16 borrower's 2005 tax return, correct?

17 A Yes.

18 Q And now for the calendar year 2005, so that's generally
19 filed in April of 2006, right?

20 A That's the latest it should be filed.

21 Q Now you don't know how much the borrower made in 2004,
22 do you?

23 A That's correct.

24 Q You don't know how much the borrower made in any given
25 month in the year 2004, do you?

1 A No.

2 Q Or the year 2005 for that matter?

3 A No. I just have the tax return that shows what their
4 income for 2005 was.

5 Q Their aggregate income for the entire year 2005?

6 A That's correct.

7 Q But not broken down by month?

8 A No.

9 Q And certainly not for the month of December 2004,
10 right?

11 A That wouldn't be on the '05. That's correct.

12 Q And that isn't anywhere in the claim package, is it?

13 A Evidence of them making \$12,000 in December of '04?

14 Q Evidence of how much money the borrower made in any
15 month of 2004 including December?

16 A No. There's no evidence of the actual income number
17 the borrower earned in 2004. That's correct.

18 Q The only evidence of how much the borrower made that
19 can be found in 2004, in December of 2004 that can be found
20 anywhere in the claim package is the loan application,
21 right?

22 A Yes.

23 Q Which you gave no weight?

24 A Given the other information in the file that's correct.
25 We thought the \$12,000 figure was a misstatement.

1 Q Based on everything else in the claim package?

2 A Based on the entire package, the '05 return, the '06
3 return, the hardship letter and all the other information
4 relating to this file.

5 Q Now the claim file also has a BLS report. Do you see
6 that? That's 834, the same exhibit on page 28.

7 (Pause)

8 Q Are you there?

9 A Yes. I see that.

10 Q It's not cited in the breach finding, but it's in the
11 claim package, right?

12 A That's correct.

13 Q And it says the area that he picked is Sacramento,
14 right?

15 A I see that.

16 Q And the position chosen is real estate agent and the
17 income at the ninetieth percentile for real estate agents
18 according to BLS is \$96,300 a year, right?

19 A I see that.

20 Q But, of course, BLS doesn't show this borrower's income
21 in 2004, right?

22 A No, it wouldn't.

23 Q It doesn't show this borrower's income at any time,
24 right?

25 A That's correct.

1 Q It doesn't show any borrower's income at any time, does
2 it?

3 A That's correct.

4 Q But even if it did by definition ten percent of
5 realtors in Sacramento, California at this time make more
6 than the ninetieth percentile, right?

7 A Yes.

8 Q And that's true with every -- every time you use the
9 ninetieth percentile in BLS, every single time ten percent
10 of people in that location at that time in that job make
11 more than what's reflected at the ninetieth percentile,
12 agreed?

13 A Ten percent do, ninety percent make less.

14 Q If you could look at plan administrator 132, please.
15 Are you there?

16 A Yes.

17 Q Have you ever studied the survey methods and
18 reliability statements issued with respect to BLS?

19 A No.

20 Q Mr. Aronoff, you testified a few minutes ago that you
21 reached the conclusion that borrower had made a
22 misrepresentation of income based on subsequent year tax
23 returns and hardship letters found in the claim file. And
24 can you please take a look at the claim file and tell me
25 what document specifically you're referring to?

1 A I don't think I said claim file. They're in the loan
2 file.

3 Q You remember this loan file?

4 A I do. It was one of the exemplars we discussed on
5 direct.

6 Q Are you sure?

7 A I'm pretty sure.

8 Q So you think there's other evidence in the loan file
9 not put in this claim file that supports the claim? That's
10 your testimony?

11 A Yes.

12 Q You appreciate, don't you, that realtors suffered a
13 downturn in their income in the years running up to the
14 financial crisis, right?

15 A I think we had this discussion. Yes.

16 Q And probably the earliest hit profession, wouldn't you
17 agree?

18 A I don't know that to be a fact one way or the other. A
19 lot of my colleagues on Wall Street may say they were hit
20 pretty early on, too.

21 Q Sure. People involved in the mortgage business and the
22 real estate business were the first to experience the
23 effects of what would later become the financial crisis,
24 don't you agree with that?

25 A Yes.

1 Q And you don't know what happened to the borrower during
2 the course of 2005 that may have affected his 2005 and
3 subsequent year income, do you?

4 A Only what he said in the hardship letter which is that
5 he wasn't effected until sometime later than that.

6 Q You think that's this loan?

7 A I do.

8 Q But in any event with respect to the tax returns that
9 you've cited you would expect to see a decrease in income
10 over the course of '05, '06 and '07 for somebody who is in
11 the real estate business, wouldn't you?

12 A Not necessarily. '04 and '05 were arguably peak years
13 for real estate --

14 Q So --

15 A -- in California before the crash. But reasonable
16 people would differ on that opinion.

17 Q And here's the key, with respect to this borrower you
18 have no idea?

19 A Again, we as -- we looked at '05. We looked at '06.
20 We looked at the hardship letter and in the two prior years
21 working for the same real estate company in the same
22 location he never made anywhere close to \$144,000 a year.

23 And so the decision was made based on the totality of
24 the file that it was more likely than not that this borrower
25 misrepresented his income.

1 Q So let's be clear about this. You've got a 2005 tax
2 return, correct?

3 A Yes.

4 Q And at any point in time between origination and the
5 end of 2004 and the end of 2005 this borrower could have
6 experienced a decrease in income that would be reflected in
7 the aggregate number reported in April of 2006, correct?

8 A Yes, including the NOL he noted in the '05 return for a
9 loss in '04.

10 Q And that is a fact, a fact that I just asked you about,
11 the potential decrease in income over the course of 2005
12 that would affect his 2005 tax return, that is a fact that
13 you don't know? You don't know what happened to the
14 borrower's income in 2005, right?

15 A That's correct.

16 Q Will you please turn to plan administrator 830?

17 MR. ROLLIN: Excuse me, Your Honor. I'm just going
18 to step back to speak with my client.

19 THE COURT: Sure.

20 (Pause)

21 MR. ROLLIN: Thank you, Your Honor. And I
22 apologize.

23 THE COURT: Okay.

24 BY MR. ROLLIN:

25 Q Are we at 830?

1 A I am.

2 MR. SHUSTER: I don't have it in my binder.

3 MR. ROLLIN: No?

4 THE COURT: It's in the new binder. It's --

5 MR. ROLLIN: Volume I.

6 THE COURT: There's a -- it's the second green tab.

7 It's --

8 MR. SHUSTER: Oh.

9 MR. ROLLIN: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 MR. ROLLIN: Let me skip it. I'm going to go to

12 831. Can you go to PA-831?

13 THE COURT: Well, Mr. Shuster went to the trouble
14 of finding it.

15 MR. ROLLIN: I did that to him on purpose.

16 (Laughter)

17 THE COURT: Okay. 831.

18 BY MR. ROLLIN:

19 Q And 831 is the claims tracking spreadsheet for a loan
20 that ends 1643, right?

21 A Yes.

22 Q And if you turn to the second page you can see that the
23 allegations are misrepresentation of income, correct?

24 A Yes.

25 Q Based on BLS, right?

1 A Yes.

2 Q And if you turn to plan administrator 832 we've
3 confirmed that's the claim package for this loan?

4 A Yes. It appears to be.

5 Q And if you go to page 5 of that exhibit, so 5 of 48,
6 that looks like the first page of the loan application,
7 right?

8 A It does.

9 Q If you turn to the next page up at the very top you see
10 this borrower is a registered nurse, right?

11 A I see that.

12 Q And if you look to the income section the amount of
13 income listed is \$13,783.33, correct?

14 A Yes.

15 Q And this is one we talked about the other day, do you
16 remember?

17 A Yes, I do.

18 Q And the borrower resides and works in the Los Angeles
19 area, right?

20 A I believe so.

21 Q If you look at page 9 of the claim package, 9 of 48 you
22 see that the loan was taken out in July of 2006, correct?

23 A Yes.

24 Q And here again we don't know what the borrower was
25 thinking when she completed the loan application, right?

1 A That's right.

2 Q Because that wasn't part of the trustees' process,
3 right?

4 A I don't know if it was or whether we could determine
5 that or not, but it wasn't. You're right.

6 Q Can you think of any means by which to find out the
7 borrower's actual income?

8 A Not offhand, but that wasn't the objective.

9 Q The objective was not to find the actual income?

10 A That's correct.

11 Q Trustee opening slide 41, please. You were here for
12 opening, right?

13 A Some parts of it.

14 Q And you see here in the opening slide by the trustees
15 the very first thing that was done by the -- the very first
16 thing listed with number one is the job that the loan review
17 firms did, right, for misrep income claims?

18 A Yeah, I see that.

19 Q And they verified borrower income using widely accepted
20 methods and sources, correct?

21 A Yes.

22 Q In fact, you can't do a debt to income ratio
23 calculation without knowing the borrower's actual income,
24 can you?

25 A You need an income number to do a debt to income ratio

1 calculation. That's correct.

2 Q And if you want it to be an accurate debt to income
3 ratio number you need the actual income, right?

4 A Or a proxy of that income. Yes.

5 THE COURT: What's a proxy of that income?

6 THE WITNESS: An estimation. Again, we -- the goal
7 -- it was to verify the borrower income and to test that
8 data point and see if based on the information in the file
9 it was more likely than not that that income number was
10 misrepresented. And that's what the exercise was. The
11 exercise was not to verify that that number was accurate.

12 Again, to the extent there was no evidence in the
13 file that there was anything wrong with that number it was,
14 in fact, verified to the extent it was going to be verified.
15 But it -- the process is slightly different because the
16 determination of the actual income number in a forensic
17 review is almost impossible given the limitations on time
18 and resources that are evident in most of these cases.

19 BY MR. ROLLIN:

20 Q So you -- you weren't trying to get an accurate real
21 income number?

22 A We were verifying the income number that was used to
23 make the loan.

24 Q Verified borrower income refers to what the borrower's
25 true income is as contrasted with what in your view would be

1 the misrepresented income on the loan application, right?

2 A No. I disagree with you.

3 Q So when you say -- when the loan review firms verified
4 the borrower income they weren't verifying the borrower's
5 true income. Do I have that right?

6 A I don't understand what you mean by true income or
7 actual income. There was a data point that was used to
8 underwrite the loan. It was the income number on the
9 application. And to the extent there was nothing in the
10 file to make it appear more likely than not that the income
11 was misrepresented, nothing was done with that loan.

12 To the extent there was information that the borrower -
13 - that supported the conclusion the borrower misrepresented
14 that income and that some other income was more likely than
15 not to be the borrower's income at the time the loan was
16 made, then the conclusion was made that that income was
17 misrepresented.

18 Q An amount of money that a borrower makes is a fact that
19 can be verified. You can ask me how much money I make and I
20 can tell you and that's a fact, right?

21 A One would assume and that's the same number that the
22 borrower would write down on the application where asked how
23 much money they make.

24 Q Please just answer the question I'm asking you. A --
25 the amount of money that a borrower makes in a given month

1 or in a given year is something that can be determined,
2 right?

3 A In theory, yes.

4 Q That's what I mean when I say actual income in the next
5 question. You were not trying to find the borrower's actual
6 income?

7 A That's correct.

8 Q And verified income does not in this slide 41 from the
9 trustees' opening, verified borrower income does not refer
10 to verifying the borrower's actual income?

11 A As explained, that's correct.

12 Q And so if you're trying to derive an actual DTI for a
13 borrower you can't do it unless you have the actual income,
14 right?

15 A Correct.

16 Q And if you're trying to get the magnitude of a
17 misrepresentation, five percent or thirty percent or fifty
18 percent, you can't do that unless you have the actual income
19 number?

20 A Well, you can't do it unless you have a referent income
21 number which is what --

22 Q No.

23 A -- we did.

24 Q No, sir. You can't do it unless you have the actual
25 income number. You can't find the actual variance unless

1 you have actual income number, isn't that true?

2 A No. That's not true.

3 Q You can find the actual variance using an estimated
4 income number?

5 A We did in about 34,000 cases in this review.

6 Q That's not quite the answer -- that may be an answer to
7 a different question, but not the one that I asked.

8 Are you telling me that you can determine an actual
9 variance between represented income and actual income
10 without having the actual income number?

11 A To the extent you define actual income as we did in
12 this case as the number that the borrower put on the
13 application for the loan, yes.

14 Q So actual income in this case -- strike that.

15 Let's start over again. I -- my question was about
16 actual income and your answer was about represented income
17 so let's start all over again.

18 Are you telling me that you can determine the actual
19 variance, the real facts, the actual variance between a
20 borrower's represented income and their actual income
21 without knowing their actual income?

22 A No.

23 THE COURT: No, you are not telling him that or no,
24 you cannot?

25 THE WITNESS: Without a referent income you can't

1 calculate a variance.

2 BY MR. ROLLIN:

3 Q I'm not asking about a referent income. I'm talking
4 about an actual income. If you're using an estimate of my
5 income and you're comparing it to a represented income, then
6 the degree of variance might be four percent in real -- in
7 real life, or it might be six percent, but you don't know
8 because you're just using an estimate of the income, right?

9 A I don't know what your question is.

10 Q Let's try it again. Maybe I'll go back to the Court's
11 question.

12 Here's my question again. Are you telling me that you
13 can determine the actual variance, the real facts, the
14 actual variance between a borrower's represented income and
15 their actual income without knowing their actual income?

16 A You can't do that.

17 Q Thank you.

18 MR. DAVIS: Can't?

19 THE WITNESS: Cannot do that.

20 THE COURT: I hate to interject, but it's -- it has
21 been about an hour and 15 minutes.

22 MR. ROLLIN: That was fast.

23 THE COURT: Yes. And I'm concerned that Mr.
24 Aronoff needs a break.

25 So, Mr. Aronoff, why don't you embark on your break

1 and I'll talk to these folks about what our game plan is for
2 the --

3 THE WITNESS: Thank you.

4 THE COURT: -- rest of the day. All right.

5 THE WITNESS: Like ten minutes, five minutes?

6 THE COURT: Yeah. Sure.

7 Mr. Shuster, could you come up?

8 (Recessed at 4:28 p.m.; reconvened at 4:42 p.m.)

9 THE COURT: Thank you everyone for your patience.
10 For the benefit of everyone so you have an understanding of
11 what timing we're talking about, especially you, Mr.
12 Aronoff, what we're going to do is go to about 5:15 today,
13 get to a stopping point. It's been a very long day and then
14 we're going to resume tomorrow at around 11:30, on or about,
15 subject to when you can actually be here.

16 Is that consistent with your conversations with Mr.
17 Shuster?

18 THE WITNESS: Yes, it is.

19 THE COURT: Okay. And with my gratitude. I know
20 it's a lot longer than frankly any of us had anticipated.
21 And I appreciate your willingness to keep coming back.

22 Okay. Back to you, Mr. Rollin.

23 MR. ROLLIN: Thank you, Your Honor.

24 BY MR. ROLLIN:

25 Q Mr. Aronoff, the income figures that you used in the

1 course of this process came from the evidence types,
2 whatever they were, provided by the re-underwriting firms,
3 right?

4 A Yes, and the application.

5 Q Can you please look to plan administrator I think it's
6 832 that refers to the claim package. Maybe it's 834.

7 A 832 or 834?

8 Q 834. And specifically page 28. I'm sorry. I'm taking
9 you to the wrong file. Stop and I'll help you get to the
10 right place. 832, please.

11 A Okay.

12 Q And can you find at page I think it's 13 the DLS that
13 was used in respect to this loan? Are you there?

14 A Yes.

15 Q And I just want to confirm that, in fact, what's
16 reflected there is the income figure and the source of the
17 income figure used by the trustees for purposes of asserting
18 this claim?

19 A I don't know. Let me just look. Okay. This appears
20 to be the BLS that was in the claim package. Yes.

21 Q And that's the income figure and the source of the
22 income figure that was used to pursue this claim, correct?

23 A Yeah. I can't do that math in my head, but it looks
24 about right. Now I can't find it. Here it is. So 95,3
25 divided by 12, 8096. Yeah. That looks close.

1 Q And you understand among other things BLS doesn't show
2 overtime, right?

3 A Yes.

4 Q Or bonuses?

5 A Generally not.

6 Q It doesn't show total compensation at all?

7 A It's used to show wage to wage.

8 Q Is that another way of saying it does not show total
9 compensation?

10 A It may show total compensation.

11 Q Well, what we do know is it doesn't include overtime.
12 It doesn't include bonuses.

13 A That's correct.

14 Q Now yesterday in reference to this loan Mr. Shuster
15 showed you TRDX-191. Do you see that up on the screen?

16 A Yes.

17 Q And this was a demonstrative that you used to describe
18 some analysis that you had done with respect to this loan,
19 correct?

20 A Yes.

21 Q The red flags, that analysis, was it done in the
22 protocol or was it done in preparation for your expert
23 testimony?

24 A I don't know if it was done in the protocol. I did it
25 in preparation for my testimony.

1 Q So if it was done in the protocol you're not the person
2 who did it?

3 A That's correct. It would have been done by the
4 forensic loan reviewer.

5 Q And it's not in the claim package anywhere, is it, this
6 analysis?

7 A Well, it is. It's all based on -- off information on
8 the application.

9 Q It's not in the -- sorry. It's not in the claim
10 description that was provided?

11 A That's correct.

12 Q Now do you remember the Court asked you some questions
13 about maybe the borrower, maybe this could be explained
14 because the borrower was putting children through private
15 school or caring for elderly parents?

16 A I do.

17 Q Will you please take a look at plan administrator 839?

18 (Pause)

19 Q Do you see that 839 contains some hardship
20 documentation? Did you find that? For example, if you take
21 a look at page 5 of 28 in that document.

22 A Okay. I see that.

23 Q Do you see that letter? And you see in the middle
24 paragraph, right about in the middle of the middle paragraph
25 it says, "I am supporting my parents who both retired early

1 due to medical problems. Not only that, I am supporting my
2 younger brother who is just starting high school."

3 MR. SHUSTER: Mr. Rollin, did you say 839?

4 MR. ROLLIN: Yes.

5 MR. SHUSTER: Can you give a page reference?

6 MR. ROLLIN: (Indiscernible).

7 MR. SHUSTER: Thank you.

8 BY MR. ROLLIN:

9 Q Do you see that?

10 A I do.

11 Q The Court's hypothetical was spot on.

12 A Five years later.

13 Q Well, you don't know when the borrower specifically
14 began supporting her parents or they had medical problems or
15 began supporting her younger brother or any of the other
16 life circumstances that she reports in this hardship letter,
17 do you?

18 A Well, the first paragraph references to the current
19 slowdown in the economy as the reason she's cash strapped at
20 this point in time.

21 Q So --

22 A And the letter is dated December 2009.

23 Q The letter doesn't say when the borrower started
24 supporting her parents or when they had their medical
25 problems or when she started supporting her younger brother

1 or any of the other life issues that she's experiencing,
2 right?

3 A No. But it raised -- I think it raises a whole bunch
4 of new questions like the fact that she admits in this
5 letter that her brother has been helping her make half the
6 mortgage payments and now she can't make them because he's
7 moved out which would cut the other way and indicate that
8 she never had sufficient income to pay this loan.

9 Q Can you answer my question, please?

10 A Can I hear it again, please?

11 Q This letter doesn't say when she started supporting her
12 parents, when they began experiencing medical problems, when
13 she began supporting her younger brother, right?

14 A Not specifically, no.

15 Q There are all kinds of life circumstances happening
16 that trustees didn't drill down on in their review because
17 they didn't speak to the borrower, right?

18 A The second part of that is true, they didn't speak to
19 the borrower. The first part is not true. To the extent
20 there was information in the file that was evidence of
21 certain life experiences that would point to the
22 consideration of the analysis of the loan, then it was
23 certainly considered.

24 Q Only to the extent there was information about the life
25 experience of a borrower was in the file did the trustees

1 consider it at all, correct?

2 A Or evident from some publicly available third party
3 tool.

4 Q But one of the things you didn't do which you just
5 admitted was you certainly did not talk to the borrower,
6 right?

7 A That's correct.

8 Q You didn't talk to anybody who was involved in the
9 underlying loan transaction at all, did you?

10 A Not to my knowledge --

11 Q And so --

12 A -- with the --

13 Q -- some things may be included in a file about a
14 borrower's life and there may be other things that don't
15 happen to be included in the loan file about a borrower's
16 life that the trustees never got to, correct?

17 A If it wasn't in the file or available through the types
18 of third party tools I discussed it wasn't looked at.

19 Q Because that wasn't part of the trustees' process, was
20 it?

21 A That's correct.

22 Q And there are plenty of borrowers, don't you agree, who
23 have life circumstances who simply may not apply for a loan
24 modification and, therefore, hardship letters like this
25 wouldn't be found in the file at all?

1 A Perhaps.

2 Q And you would never find out about any of it in your
3 process?

4 A Perhaps that's true if that -- if those circumstances
5 existed and there was no documentation in the file we would
6 never would have seen it.

7 Q And therefore was not part of your analysis?

8 A We didn't look at what wasn't there. That's correct.

9 Q Can you please turn to 821, PA-821?

10 (Pause)

11 Q Are you there?

12 A Yes.

13 Q 821 is an excerpt from your Exhibit 15 to your
14 affirmative report, correct?

15 A It appears to be. Yes.

16 Q And the breach allegation is in Column F, correct?

17 A The factual basis is in F, yes.

18 Q And the factual basis for this claim is that the
19 borrower did not disclose a loan that was originated after
20 the subject loan, right?

21 A That's apparently correct.

22 Q Now this loan -- if you'll turn to TRX-601 which should
23 be the next tab in your binder you will find your expert
24 report, your affirmative report.

25 A I'm sorry. Where am I turning?

1 Q TRX-601 which I hope is the next tab in your binder.

2 A In the same binder?

3 Q Yes, sir.

4 A No. The next tab is PA-697.

5 (Pause)

6 Q Mr. Aronoff, will you look more forward in the binder
7 towards the beginning and see if you can find TRX-601? I
8 just led you to the wrong place.

9 (Pause)

10 A Got it.

11 Q Are you there?

12 A Yes, I am.

13 Q Okay. And that's your affirmative expert report?

14 A Yes.

15 Q Now using the numbers, the exhibit numbers at the
16 bottom as a reference would you please turn to page 62 of
17 96? And you see this is that same loan? I'm sorry. I'll
18 make it easier. The second to the last bullet on page 62 of
19 the exhibit, which is page 57 of your report if you prefer
20 to look for it that way, is this same loan that I'm asking
21 you about.

22 A Okay. Which tab are we in with the loan, please?

23 Q Tab with the loan is PA-821.

24 A Got it.

25 Q And have you found the page in your expert report where

1 this loan is identified?

2 A Yes.

3 Q And it's that an ultimate bullet on page 62 of the
4 exhibit, 57 of your report, correct?

5 A I see it.

6 Q And you chose this loan specifically to be an example
7 in your expert report?

8 A Okay.

9 Q And you can see that the claim here that this
10 undisclosed loan closed nine days after the subject loan,
11 correct?

12 A That's what it says.

13 Q And the evidence to support that is a LexisNexis
14 report, correct?

15 A Yes. That's what it says.

16 Q And if you want to check the finding in Exhibit PA-821
17 you'll see there as well that the evidence cited is the
18 LexisNexis report.

19 A Okay. What did you just refer to, the other tab?

20 Q The other tab that shows the loan, PA-821, Column F.

21 A Yeah. It just says audit review. It doesn't say
22 LexisNexis on my copy.

23 Q Okay. Let's turn to the claim package, PA-803.

24 A Okay.

25 Q And I'll direct your attention to page 18 of 19. Are

1 you there?

2 A I am.

3 Q And that's the LexisNexis report upon which this claim
4 is based, correct?

5 A It looks like it is. Yes.

6 Q Okay. You can see LexisNexis on page 19 at the
7 copyright sign, right?

8 A Yes.

9 Q And the allegedly undisclosed post-closing debt is
10 about the bottom third on page 18 of 19, correct?

11 A Yes.

12 Q And it's your opinion, isn't it, that a LexisNexis
13 report like this is sufficient evidence to prove the claim
14 without any verification from any other source, correct?

15 A It can be. Yes.

16 Q Can you please turn to PA-697?

17 A PA-697?

18 Q Yes.

19 THE COURT: It's about six tabs from the back of
20 the binder, Mr. Aronoff.

21 THE WITNESS: Okay.

22 MR. ROLLIN: Thank you, Your Honor.

23 THE WITNESS: Okay. I'm with you.

24 BY MR. ROLLIN:

25 Q Great. Thanks. Sorry about that.

1 A That's okay.

2 Q And when you get to it you'll see 697 is just a few
3 pages from a 105 page document that we've shortened just to
4 save part of the tree.

5 Now I'll ask you to turn to page 105 and let me know
6 when you're there.

7 A Okay.

8 Q And on page 105 there's a notice from LexisNexis
9 titled, important. Do you see that?

10 A Yes.

11 Q And right in the middle there's a sentence that begins,
12 this system should not. Do you see that?

13 A Yeah, I see it.

14 Q And it says, "This system should not be relied upon as
15 definitively accurate. Before relying on any data this
16 system supplies it should be independently verified." Do
17 you see that?

18 A Yes.

19 Q And the trustees for this claim did not independently
20 verify the LexisNexis report, did they?

21 A I don't know.

22 Q There's certainly nothing in the claim package
23 suggesting independent verification.

24 A Okay. It doesn't say this, but there may be something
25 in the loan file.

1 Q First of all, is there anything in the claim package
2 that shows independent verification?

3 A I don't know. I can look. I was going to take your
4 representation to that effect. But I don't know. I -- is
5 the whole claim package here?

6 Q Yeah.

7 A Okay. Then I would assume there's not if you're asking
8 me that.

9 Q And, again, the loan review firms didn't add anything
10 to the loan files because you had your own loan files. They
11 just sent you the claim packages, right?

12 A This page that I just looked at, is this for a
13 different loan, 105, does this relate to the loan we're
14 talking about?

15 Q You're talking about PA-697?

16 A Yes.

17 Q No. That's just from LexisNexis. That's not related
18 to this loan except to the extent that you relied on
19 LexisNexis.

20 A Okay. There is a disclaimer on the LexisNexis page for
21 the loan we looked at as well. I don't know if it had the
22 same language. In fact, it said one of the permitted uses
23 was litigation.

24 Q Does that mean that it doesn't have to be independently
25 verified?

1 A No. It means that like with all these documents it
2 should be used in a responsible manner and the underwriters
3 and those professionals involved in this industry understand
4 that there are sometimes mistakes in documents. And they
5 should take that into consideration and they should assess
6 the evidence in the context in which -- in which it's
7 offered as well.

8 Q Oh, I understand that's what you're saying they should
9 do. My question now is, is that what they did?

10 A I believe that the loan review firms that were used in
11 this review acted responsibly and thoughtfully and in
12 accordance with industry custom and practice.

13 Q Is that your -- is that a fact or is that an opinion?

14 A It's my opinion.

15 Q You're giving that as opinion testimony, not fact
16 testimony?

17 A That's correct.

18 Q But if I asked you what happened specifically with
19 respect to this loan and whether there was independent
20 verification your answer to that would be, I don't know,
21 correct?

22 A Yes.

23 Q And there's nothing in this claim package other than
24 the LexisNexis report to support the allegation that this
25 debt was taken out by this borrower in this amount on the

1 date stated in the breach finding, right?

2 A Yeah. Which claim package are we talking about now?

3 Q The claim package is plan administrator 803.

4 (Pause)

5 A I think that's -- that's correct. I lost the claim
6 package. I can't find it.

7 Q Now -- well, sorry. It's PA-803 and I'm going to ask
8 you another question about it so you should find it.

9 A How far -- oh, here it is. Go ahead. I'm in the claim
10 package now.

11 Q Do you have the loan application at the very beginning
12 of the packet?

13 A Yes. I'm in the loan application.

14 Q And on page 3 of 19 is the real estate owned section,
15 right at --

16 A Yes.

17 Q -- the bottom?

18 A Yes.

19 Q And there's no place in the real estate owned section
20 or anywhere on the loan application where the borrower is
21 supposed to write down a debt that she has not yet incurred,
22 correct?

23 A There's nothing that precludes them from writing debt
24 they know about in this spot.

25 Q There's no place in the real estate owned section where

1 you write down a debt that you haven't taken out yet, right?

2 A No. I'm saying there's nothing in that section that
3 precludes a borrower from being honest about debt they know
4 is going to close within a few days of the subject.

5 Q When it says the words, schedule of real estate owned,
6 do you interpret that to be schedule of real estate to be
7 owned?

8 A It can be. It's -- it -- there -- as I said there's
9 nothing that precludes them from doing it.

10 Q But that's -- that's what you -- that's different from
11 the words that are used on the page. The words that are
12 used on the page are, schedule of real estate owned, not
13 schedule of real estate to be owned.

14 A That's correct.

15 Q And there's no section that says, this is where you
16 write down the debts you think you're going to take out in
17 the future --

18 A That's correct.

19 Q -- right? There's also no place where you write down,
20 I might get a promotion, right?

21 A That's correct.

22 Q Or I might get a divorce?

23 A That's true.

24 Q Or one of my elder parents is going to need care in the
25 near future, right?

1 A That's correct.

2 Q The loan application doesn't call for future facts. It
3 calls for the facts as they exist.

4 A And to the extent a borrower knew that they were going
5 to incur debt within a short time after the subject they
6 should disclose that. And the failure to do so is a
7 misrepresentation of debt.

8 Q Right. But there's no place on the loan application
9 for that. And --

10 A Again --

11 Q -- you may assert that they have a duty to disclose,
12 but I'm focusing on something more narrow and that is
13 whether there's a place on the loan application to list
14 future events, positive and negative?

15 A Again, there is a place one could list it if they
16 wanted to. It's not required by the language of the
17 application to do so.

18 Q And likewise there's no place where you write down you
19 might get a promotion or a raise or a divorce or anything
20 else in the future, right?

21 A Well, again, if you knew that to be so then that's
22 probably something to the -- and to the extent it
23 substantially increased your income then you could
24 demonstrate that I've been promoted. It's going to happen
25 next month. That's probably something you would want to

1 share with the lender.

2 Q I'm trying to draw a careful distinction here. There
3 is -- what you share with the lender, in other words what
4 you write down on the loan application, there's no place on
5 the -- and I'll talk about what you share with the lender in
6 a minute, so. But there's no place on the loan application
7 to write down your future debt.

8 A Again, we disagree on that. You could write it down
9 there.

10 Q There's certainly no instruction that says, you should
11 read schedule of real estate owned to be a place where you
12 write down future debts that you haven't taken out yet.

13 A That's correct.

14 Q Now there may be other borrower disclosures that are
15 given to the lender outside of the loan application, right?

16 A Yes.

17 Q They talk, right?

18 A Not anymore. No.

19 Q When people take out mortgage loans they typically talk
20 to their lender. They have an interview. They exchange
21 information, correct?

22 A That's just not true anymore. No.

23 Q What's anymore?

24 A The -- you're harkening back to when you walked into
25 your local thrift in the 50s. Loans are made more -- loans

1 are generally made now without the borrower ever meeting the
2 ultimate lender.

3 Q Did this borrower meet the lender?

4 A Don't know.

5 Q When you gave loans did you meet the borrowers?

6 A Personally, not frequently, no.

7 Q But you understand that in mortgage lending there is a
8 process by which the lender and the borrower communicate,
9 correct?

10 A Not to the extent there's a broker involved which is
11 most of these loans.

12 Q The borrower could be communicating with the broker and
13 they could be communicating with the lender directly, either
14 way.

15 A Generally if there was a broker involved there was no
16 communication between the borrower and the lender.

17 Q They would provide the broker information and the
18 broker would pass that information onto the lender, correct?

19 A That's right.

20 Q Or if they were speaking directly to the lender they
21 would give information to the lender?

22 A Perhaps.

23 Q And some of the communications, whether it's with the
24 broker or with the lender, are verbal?

25 A And they can be written outside of the application

1 requirements as well.

2 Q So they can be both a verbal discussion and written
3 outside of the application, agreed?

4 A Yeah.

5 Q And so you don't know what disclosures this borrower
6 made or any borrower made outside of what's in the loan
7 application, right?

8 A Outside of what's in the file.

9 Q So if the borrower made a disclosure verbally or in
10 writing and it wasn't included in the file you would have no
11 way of knowing that?

12 A Other than looking at the DTI that was used and
13 noticing that that soon to be incurred debt wasn't included
14 in the DTI. That's correct.

15 Q You don't know what disclosures were made to the
16 borrower unless -- or were made to the lender or the broker
17 unless those disclosures are put in the file that you
18 reviewed, correct?

19 A Yes.

20 Q Now the file that you reviewed was the servicer's
21 scanned copy, correct?

22 A I don't know.

23 Q You don't know whether this file that you reviewed or
24 any file that you reviewed was the same as it was at
25 origination, do you?

1 A That's correct.

2 Q You don't know its travels, correct?

3 A No, I don't.

4 Q You don't know that all of it was scanned?

5 A I don't understand that question.

6 Q You don't know that all of it was -- all of the hard
7 copy documents were actually scanned into what you
8 ultimately reviewed?

9 A Right. I don't know that.

10 Q And the trustees as part of this process didn't collect
11 any documents that the originator had, right?

12 A I don't believe that to be the case. I think you're
13 wrong.

14 Q Do you believe that with respect to the loans that were
15 reviewed in this case you reviewed documents that came
16 directly from the originator?

17 A As I just said I don't know what the providence of the
18 documents that were in the file we reviewed were. They --
19 in many cases they appeared to be the original credit file
20 that came from the originator, but I don't know that to be
21 the case.

22 Q I understand. You did not give any direction with
23 respect to this loan review to make sure that all of the
24 copies of the file that existed were collected for purposes
25 of your review, did you?

1 A No. I don't --

2 Q And --

3 A -- know -- I'm -- no.

4 Q And as far as you know nobody gave that direction?

5 A I know there was a concerted effort to obtain complete
6 files prior to embarking on the review. I know there was a
7 representation made about the completeness of about 50,000
8 files before embarking on the review. But beyond that I
9 don't know what efforts were made to obtain every piece of
10 paper that pertained to that loan during the life of that
11 loan. That's correct.

12 Q And you do know that at closing multiple files are
13 typically made, multiple copies of the loan file are
14 typically made, right?

15 A Sometimes.

16 Q The borrower gets one, right?

17 A Yes.

18 Q You didn't give any instructions to collect that one,
19 did you?

20 A I didn't give instructions to collect anything. So,
21 no.

22 Q And as far as you know those weren't collected, right?

23 A I don't believe borrowers were contacted to ask for
24 their file copies of loan files. No.

25 Q Now in addition to loan files that originators may have

1 and then pass on as they sell the loan, they also keep other
2 records, correct?

3 A They may.

4 Q Outside of the loan file, correct?

5 A They may.

6 Q You don't know, right?

7 A I don't know what?

8 Q You don't know whether the originators that originated
9 these loans kept files outside of the loan files that
10 pertained to these borrowers or these loans?

11 A You mean secret credit files? I don't understand the
12 question.

13 Q I mean, a place where they keep notes. You don't know
14 that, right?

15 A Is that a question?

16 Q Yeah. You don't know --

17 A Yes. That's correct. I don't know that.

18 Q And it wasn't part of the trustees' process to find
19 out, right?

20 A That's correct. It was not.

21 MR. ROLLIN: Your Honor, I think based on our
22 previous discussion this is a good time to stop.

23 THE COURT: I agree.

24 All right. Thank you.

25 Thank you again, Mr. Aronoff. We'll resume at

1 11:30 or as soon thereafter as you're able to get here. I
2 appreciate your ongoing cooperation with this process which
3 has taken longer than anyone anticipated.

4 Do I have someone -- you can just leave -- leave
5 all your things the way they are. We'll just --

6 MR. ROLLIN: Thank you, Your Honor.

7 THE COURT: -- we'll just work around you. Yeah.
8 Thank you.

9 MR. ROLLIN: Thank you, Your Honor.

10 THE COURT: Have a good evening.

11 MR. ROLLIN: Thank you.

12 (Whereupon, these proceedings concluded at 5:19 p.m.)

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JAMES H. ARONOFF	MR. DAVIS	6
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C E R T I F I C A T I O N

We, Dawn South and Sherri L. Breach, certify that the
foregoing transcript is a true and accurate record of the
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Dawn South

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email=digital@veritext.com, c=US
Date: 2017.12.20 15:21:57 -05'00'

Dawn South

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Sherri L. Breach

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DN: cn=Sherri L. Breach, o, ou,
email=digital@veritext.com, c=US
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Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501